TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1906

No. 37

MARY SHAFFNER AND JACOB A. SHAFFNER, APPELLANTS,

vs.

MINNIE D. GOLDBERG AND GEORGE BOND,

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JULY 24, 1906.

(18,607)

(18,607.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 87.

MARY SHAPPIRIO AND JACOB I. SHAPPIRIO, APPELLANTS,

vs.

MINNIE D. GOLDBERG AND GEORGE GOLDBERG.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Page.
Caption	1
Transcript from the supreme court of the District of Columbia	1
Caption	1
Bill of complaint	1
Exhibit B—Plat of lots	5
Answer	5
Exhibit G. G. No. 1—Plat of original lots 1, 2, 3, and 28, in square 977	11
Stipulation of counsel as to deed of trust	11
Receipt for $100 in part payment of lot No. 38, square 977	12
Testimony on behalf of complainants	13
Testimony of Mary Shappirio	13
Leopold Richold	13
Jacob I. Shappirio	16
Rufus H. Darby	21
Alfred Nalley	22
Benjamin S. Simmons	25
Thomas F. Galloway	26
John H. Gates	30

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 24, 1903.

	Page
Application for permit for repairs, alteration, &c	35
Permit to repair or reconstruct buildings	35
Testimony of John F. Donohoe	36
Leo Simmons	42
Fred G. Aukam	43
Redirect examination	48
Exhibit "A"—Authority to sell lot 28, square 977	48
"B"—Receipt for rent	48
"C"—Receipt for rent	48
"D"—Receipt for rent	49
"I"—Deed from Goldberg *et al.* to Mary Shappirio	49
Exhibit L. S. No. 1—Chain of title	51
No. 2—Chain of title	52
Stipulation of counsel as to facts	54
Testimony of Rufus H. Darby	54
Alfred Nalley	56
Leopold Richold	59
Jacob I. Shappirio	72
Thomas F. Galloway	89
Testimony on behalf of defendants	96
Testimony of Lewis A. Roginski	96
Benjamin W. Guy	105
Solomon Lewis	109
Isaac Roginski	117
Exhibit Defendants' No. 1—Deed from S. Cross to Perry *et al.*	147
No. 2—Deed from Goldberg to Edson *et al.*	149
No. 3—Certificate of title	151
No. 4—Plat of property	152
No. 5—Deed from Darby *et al.* to Goldberg	152
No. 6—Unpaid assessments for special improvements	154
No. 7—Arrears of general taxes	155
No. 8—Estimate for surveying	156
No. 9—Letter from L. Richold to Thos. M. Fields	156
No. 10—Envelope from L. Richold to T. M. Fields	156
No. 10—Letter of Fields to Richold	157
No. 12—Letter from J. Shappirio to G. Goldberg	157
Testimony on behalf of complainants in rebuttal	157
Testimony of Louis Goldberg	157
Abe Sakolski	159
Isaac Sakolski	162
T. Edward Clark	165
Peter Yudelevit	171
Leopold Richold	172
Thomas F. Galloway	176
Charles A. Campbell	178
Leo Simmons	183
Jacob I. Shappirio	184
Solomon Lewis (recalled)	185

Page
Testimony of Leo Simmons 191
Jacob I. Shappirio (recalled) 191
Leo Simmons 193
Testimony on behalf of defendants in surrebuttal 194
Testimony of W. Goldberg 195
Exhibit Surrebuttal No. 1—Letter from Thos. M. Fields to Solomon Lewis 198
No. 2—Letter from Solomon Lewis to Thos. M. Fields 199
Decree dismissing bill 199
Appeal and penalty of appeal bond fixed 200
Citation 200
Memorandum: Appeal bond filed 201
Brief of depositions of Minnie and George Goldberg 201
Directions to clerk for preparation of transcript 224
Clerk's certificate 225
Appellants' designation of parts of record to be omitted in printing 225
Appellees' designation of parts of record to be printed 226
Minute entry of argument 227
Opinion 227
Decree 233
Petition for appeal 233
Order allowing appeal 233
Bond on appeal 234
Citation and service 235
Clerk's certificate 235

In the Court of Appeals of the District of Columbia.

MARY SHAPPIRIO ET AL., Appellants,
vs.
MINNIE D. GOLDBERG ET AL.
No. 1177.

a Supreme Court of the District of Columbia.

MARY SHAPPIRIO and JACOB I. SHAPPIRIO, Her Husband, Complainants,
vs.
MINNIE D. GOLDBERG and GEORGE GOLDBERG, Her Husband, Defendants.
No. 22295. In Equity.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill to Establish Title, &c.*

Filed May 10, 1901.

In the Supreme Court of the District of Columbia.

MARY SHAPPIRIO and JACOB I. SHAPPIRIO, Her Husband,
vs.
MINNIE D. GOLDBERG and GEORGE GOLDBERG, Her Husband.
No. 22295, Docket 50.

To the supreme court of the District of Columbia, holding an equity court:

The complainants respectfully represent:

1st. That they are citizens of the United States and residents of the District of Columbia. Complainant Mary Shappirio sues in her own right, having relation to her separate estate, and Jacob I. Shappirio sues as the husband of said Mary Shappirio.

2nd. The defendants are citizens of the United States and residents of the District of Columbia. The defendant Minnie D. Goldberg is sued as the wife of George Goldberg, and in her own right as may appear. The defendant George Goldberg is sued in his own right.

3rd. Heretofore, to wit, on the 11th day of May, 1900, the complainant Mary Shappirio, through her husband, agreed to purchase of the defendant George Goldberg premises known as No. 1245
2 and 1247 Eleventh street southeast, in the city of Washington, District of Columbia; that said premises are located on part of lot twenty-eight (28) and part of lot two (2), in square nine hundred and seventy-seven (977), of the said city, and which parts of lots or land *is* described as follows:

Beginning for the same at the southeast corner of said lot twenty-eight (28) and running thence north on said Eleventh street thirty-four feet (34), thence west eighty feet and eight inches (80 ft. 8 in.) to an alley, thence south on said alley fourteen feet (14), thence west with the line of said alley twelve feet (12), thence south twenty feet (20), thence east ninety-two feet and eight inches (92 ft. 8 in.) to the place of beginning; which parts and parcels of real estate are improved with two certain stores and dwellings, together with two certain stables or barns fronting upon the alley on the rear of said land.

4th. That at the time of said sale the said Goldberg was using and occupying both of said stores and all the appurtenances to said buildings, and the yards at the rear were all inclosed as one, with no dividing fence between them. The complainant Jacob I. Shappirio, acting as the agent of said Mary Shappirio, was told by the said George Goldberg that the entire yard inclosed and the barns, then in the use and possession of him, the said Goldberg, *was* a part and parcel of said premises, and that the sale included all the land as hereinbefore described. Your complainants are advised that said land and premises had been used by said Goldberg, aforesaid, for many years as part of said premises.

5th. Your complainant, Mary Shappirio, agreed to purchase
3 said property as the same was pointed out and described to her husband, acting as her agent, at the price of six thousand dollars in cash, and the said Goldberg agreed to sell and convey same to her for said sum.

That said Goldberg stated, as aforesaid, that the land as hereinbefore described all belonged to and was a part of the premises; there being no outward appearance to show a different state of affars, and your complainants having full faith and confidence in him, the said Goldberg, relied upon such representations.

That the entire transaction in relation to transferring the property was left to one L. Richold, the agent of said Goldberg.

That neither complainant Mary Shappirio nor her husband were familiar or posted upon such matters and relied solely upon such representations; that said Goldberg knew at the time of making such representations that he did not own the record or legal title to any part of said lot two (2) of said square as included in said description.

6th. Which part of lot is described as follows:

Beginning for the same at the northwest corner of said lot two (2) and running thence east on an alley thirty feet (30), thence south

twenty feet (20), thence west thirty feet (30), and thence north to the place of beginning.

That notwithstanding the fact that said Goldberg had agreed to sell said pieces or parcels of land and premises to your complainant Mary Shappirio, he only conveyed to her that part of said described land which comes within the lines of lot twenty-eight (28), in said square.

4 The deed conveying same was not examined by your complainants, or either of them, before paying for said property; having full faith and confidence in said Goldberg and relying upon said representations, did not deem it necessary to do so.

7th. That said Goldberg, knowing that he did not own the legal title to said part of lot two (2), and while occupying said premises as tenant of complainant Mary Shappirio, with the intention to further cheat and defraud her in the enjoyment of said property, did, to wit, on the 28th day of September, 1900, seek out the owner of the legal or record title to said part of lot two (2), purchased same, and caused the title to be conveyed to his wife, the said Minnie D. Goldberg. A certified copy of the deed is herewith filed and marked Exhibit A.

9th. That your complainants were ignorant of all such transactions and did not suspect any wrong, or that said Mary Shapoirio had been so grossly defrauded, until said Goldberg sent said Richold to her husband to know if he would sell said property to him, the said Goldberg, for a great deal less than she paid for it, and at the same time called attention to the fact that he had not conveyed all of the property covered by the premises, and did not own same at the time he sold it, but had lately acquired the yard and the part upon which the barn to premises No. 1247 stood.

Your complainant refused to comply with his request, and said Goldberg thereupon notified her that he would remove from said premises and cease to occupy same as tenant.

10th. Thereupon said Goldberg caused a fence to be con-
5 structed around that part of said described land which fell within the line of said lot two (2), and said fence comes within twelve inches of the back building of premises No. 1247, preventing the blinds on the first floor from being used, making it impossible to use the kutchen and entirely depriving her of the use of the barn and yard on said part of lot. Your complainants are advised that the piece and parcel of land within the line of lot two (2) was always used and occupied by said Goldberg as part of premises No. 1247 11th street, and that all the improvements placed thereon, consisting of fencing and a large frame barn, were placed upon same by the said Goldberg; that if the same is cut off and taken from said premises it will leave same without any back yard or any outlet from the alley and will largely diminish the value of same. Your complainants are advised, and so aver, that said Goldberg paid from his own means the sum of, to wit, $250.00 for said part of lot two (2); that he caused the title to same to be placed in the name of his wife, the said Minnie D. Goldberg, as aforesaid, as a part of

his scheme to defraud your complainants, and that said Minnie D. Goldberg was party to said fraud and has no interest in said property otherwise than to hold it for her husband, to aid him in carrying out his fraudulent scheme; that the sum paid for said property was, as she is advised, more than three times its market value, and that said Goldberg only purchased same for the purpose hereinbefore set forth.

11th. Complainant Mary Shappirio avers that she did not intend to purchase only the property conveyed to her, and would not
6 have purchased or paid for same but upon the supposition that she was buying the two pieces or parcels of land as shown and pointed out to her husband.

Complainant Mary Shappirio further avers she has been put to great expense in the transfer and improvement of said property, payment of taxes, and etc., and if said piece or parcel of land within the lines of said lot two is taken from said premises it will be of great damage and injury to her. Complainants herewith file a plat, marked Exhibit B, showing the location and description of said property as the same was when it was shown to said Jacob I. Shappirio, and a photograph, marked Exhibit C, showing same as it is now, with the fence cutting off part of same.

Complainants being without remedy without the aid of this honorable court, they pray as follows:

a. That the writ of subpœna may issue from this court to said defendants, requiring them to appear and answer the exigencies of this bill, but not under oath, answer under oath being hereby expressly waived.

b. That all necessary references may be had and account taken, if necessary.

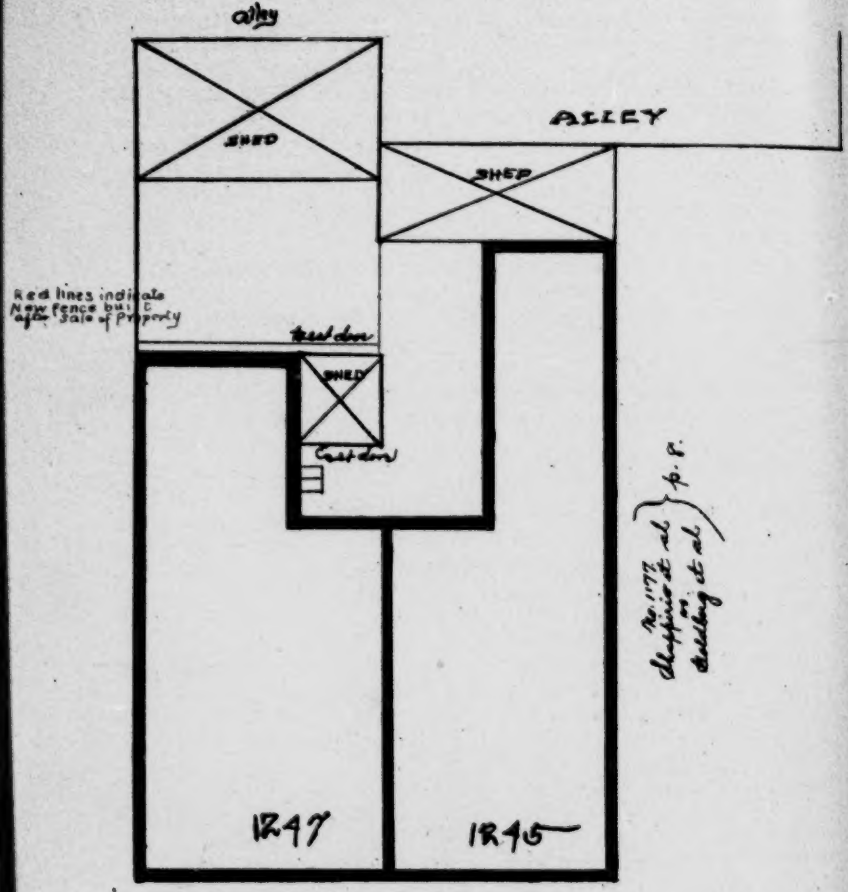
c. That it may be declared by this court that said Minnie D. Goldberg hold said piece or parcel of land falling within the lines of said lot two (2) for the use — complainant Mary Shappirio, and that she may be required to convey same to her free and clear of any incumberance placed upon same.

d. That if the court finds such relief as set forth in prayer *c* cannot be granted, then that the sale to your complainant, Mary Shappirio, be rescinded, and that said George Goldberg be required to refund to her the full amount she paid for said property, together with all costs and charges that she has been put to or suf-
7 fered by reason of said sale, together with interest thereon from date of such payment, and a reasonable amount for such other damages as she has suffered by reason thereof; and should he fail to do so within a certain time to be fixed by this court, that said property may be sold by a trustee or trustees appointed for the purpose; and in case the same shall not sell for enough to fully satisfy and pay your complainant's claim, she may have personal decree or judgment against said George Goldberg for any remainder.

e. That the defendant Minnie D. Goldberg may be restrained pending this suit from selling or disposing of said piece or parcel of land or in anywise incumbering same.

COMPLAINANTS' EXHIBIT "B."

Filed, MAY 18, 1901.



LINES IN BLACK INDICATE PROPERTY BEFORE SALE.

11TH Street.

f. That said complainant may have such further and other relief as the nature of the case may require and — equity pertain.

The defendants to this suit are George Goldberg and Minnie D. Goldberg.

MARY SHAPPIRIO,
JACOB I. SHAPPIRIO.

LEO SIMMONS,
Sol'r for Compl't.

We, Mary Shappirio and Jacob I. Shappirio, on oath say we have read the foregoing bill by us subscribed and know the contents thereof; that the matters and things therein stated of our own personal knowledge are true, and these statements upon information and belief we believe to be true.

MARY SHAPPIRIO,
JACOB I. SHAPPIRIO.

Subscribed and sworn to before me this 17th day of May, 1901.
[SEAL.] GEORGE C. AUKAM,
Notary Public, D. C.

(Here follows diagram marked p. 8.)

9 *Joint Answer of Defendants.*

Filed June 26, 1901

In the Supreme Court of the District of Columbia.

MARY SHAPPIRIO, JACOB I. SHAPPIRIO } Equity. No. 22295.
vs. Docket No. 50.
MINNIE D. GOLDBERG, GEORGE GOLDBERG.

The joint answer of Minnie D. Goldberg and George Goldberg to the bill of complaint of Mary Shappirio and Jacob I. Shappirio against them in chancery exhibited.

For answer to the said bill of complaint and the several allegations and paragraphs thereof these defendants respectfully state as follows:

1. They admit that the complainants are residents of the District of Columbia. They neither admit nor deny that the complainants are citizens of the United States, for want of knowledge, information, or belief thereof, and demand strict proof of their alleged citizenship. They neither admit nor deny that the "complainant Mary Shappirio sues in her own right, having relation to her separate estate," for want of knowledge or information thereof, but they believe, and so aver, that the matters and things in the said bill have no relation to any separate estate belonging to her, and that the property involved in this suit is not her separate estate, and they demand strict proof of

her alleged separate estate. They admit that the complain-
10 ant Jacob I. Shappirio sues as the husband of the complainant Mary Shappirio.

2. They admit the allegations of the second paragraph of the said bill of complaint.

3. In response to the allegations of the third paragraph of the said bill of complaint, these defendants say that they did not know the complainant Mary Shappirio in connection with the property involved until about the time when they executed their deed to her on June 5, 1900. Prior to that time they knew only the complainant Jacob I. Shappirio in the matter of the sale of the property. They positively deny that any part of the premises sold or agreed to be sold to the said Jacob I. Shappirio was located on or consisted of part of lot No. 2, in square No. 977. They also deny that the property sold or agreed to be sold to the said Jacob I. Shappirio was or is contained within the metes and bounds set forth in the said third paragraph of the said bill. The said metes and bounds are wholly fictitious and are merely created on paper for the purpose of this suit. The only property sold or agreed to be sold to the said Jacob I. Shappirio was and is that described in the said deed from these defendants to the said Mary Shappirio. This deed was prepared by her own expert agents after full examination by them of the title and plat of the property owned by the defendant George Goldberg, which property was described in general terms as the south thirty-four (34) feet front of lot 28, in square No. 977, and by this description only was the property conveyed to the said defendant by deed in fee-simple from Samuel Cross, R. Ross Perry, and Judson T. Cull, assignees, dated February 6, 1879, recorded February 27, 1879, in Liber No. 904, folio 413 *et se-*
11 *quitur*, one of the land records of the District of Columbia.

When the said deed of June 5, 1900, was executed and delivered by these defendants to the said Mary Shappirio these defendants did not, nor did either of them, own, nor had they or either of them ever owned, any part whatever of the said lot No. 2, in the said square No. 977, of which fact the complainants were then well aware. The said property was and is fully and correctly described in the said deed of June 5, 1900, as follows: "All that part of original lot numbered twenty-eight (28) in square numbered nine hundred and seventy-seven (977), contained within the following metes and bounds, namely: Beginning for the same at the southeast corner of said lot and running thence north on Eleventh street thirty-four (34) feet; thence west eighty (80) feet eight (8) inches to an alley; thence south on said alley fourteen (14) feet; thence east eighteen (18) feet; thence south twenty (20) feet, and thence east sixty-two (62) feet eight (8) inches to the place of beginning." This deed was duly recorded by the complainants on June 5, 1900, in Liber No. 2517, folio 22 *et sequitur*, one of the land records of the District of Columbia. This description is so clear that its very reading shows a piece of land of a shape and of dimensions so

utterly inconsistent with the property as described and claimed by the complainants in their bill that it is impossible that they or either of them could have honestly thought or believed for one moment that any part of said lot 2 was included or intended to be included in the land which the defendant George Goldberg sold or agreed to sell to them or to either of them. These defendants positively deny that the premises sold or agreed to be sold by the said George Goldberg, and known as Nos. 1245 and 1247 Eleventh
12 street southeast, were located upon or included any part whatever of the said lot No. 2. A plat of lots 28, 1, 2, and 3 in the said square is hereto annexed and made a part hereof, and marked "Defendants' Exhibit G. G. No. 1." There was and is but one stable or shed upon the said part of the said lot No. 28, conveyed by these defendants to the said Mary Shappirio by their said deed of June 5, 1900, and not two, as alleged by the complainants in the said third paragraph of their said bill of complaint.

4. For answer to the fourth paragraph of the said bill, these defendants say positively that they deny that the defendant George Goldberg at any time whatever told the said Jacob I. Shappirio that the premises included two stables, or any part whatever of the said lot No. 2, upon which one of the said stables stood, but, on the contrary, the said George Goldberg prior to June 5, 1900, distinctly told the said Jacob I. Shappirio that he, the said George Goldberg, did not own the said stable on the said lot No. 2, nor the land upon which the same stood, and that the sale or agreement to sell did not and could not, therefore, include the said stable on the said lot No. 2 or any part whatever of the said lot No. 2.

5. In answer to the fifth paragraph of the said bill, these defendants say that the complainant Jacob I. Shappirio agreed to purchase from the defendant George Goldberg, for $6,000.00, only and exactly the property described in the said deed of June 5, 1900, and no more, and the defendant George Goldberg agreed to sell and sold only the said property described in the said deed of June 5, 1900, and no more. Again, these defendants positively deny that the said George Goldberg stated to the said Jacob I. Shappirio
13 that any part whatever of the said lot No. 2 was a part of the premises agreed to be sold, but he stated just the contrary. These defendants also deny that the complainants purchased the premises conveyed in reliance upon any representations whatever of these defendants or either of them, but, on the contrary, as hereinbefore stated, they caused a full and complete examination of the title and plat of the property to be made by experts employed by them, and they also caused the said deed of June 5, 1900, to be prepared by and executed under the supervision of expert conveyancers employed by them. These defendants further deny that L. Richold, mentioned in the said fifth paragraph of the said bill of complaint, was solely their agents, but, on the contrary, they say that said Richold was also the complainants' agent. These defendants also deny that the complainants were not fully familiar with or posted upon the details of the sale involved in this suit. They again deny

that the complainants relied solely or at all upon any representations of these defendants or either of them. They admit, however, and the defendant George Goldberg expressly so stated to the said Jacob I. Shappirio prior to June 5, 1900, that he, the said George Goldberg, did not own the record or legal title, or any title of any kind whatever, to the said lot No. 2, the said part of the said lot No. 2, or any part of the said lot No. 2.

6. These defendants, answering the sixth paragraph of the said bill, admit that the said part of the said lot No. 2 is correctly described therein. They again deny that the said George Goldberg either sold or agreed to sell to the complainants any part of the said lot No. 2. They also admit that the property conveyed
14 by their said deed of June 5, 1900, only included land which came within the lines of the said lot 28, in the said square No. 977, but this was in strict and literal accordance with the agreement to sell. They again state that the complainants did not rely upon any representations whatever of these defendants or either of them in the transaction, but complainants employed expert examiners and conveyancers to investigate and close the matter for them, and whether the complainants or either of them examined the said deed before paying for the said property is utterly immaterial, both because of the employment by the complainants of and the services rendered to and for them in the matter by said experts, namely, the Real Estate Title Insurance Company, and because of the familiar rules of the law.

7. For the answer to the seventh paragraph of the said bill, these defendants say that they deny the allegations thereof in manner and form as the same are therein set forth. They positively deny that the said George Goldberg ever purchased the said lot No. 2, but on September 28, 1900, the defendant Minnie D. Goldberg, in her own name, and solely with her separate estate and money, purchased the said part of the said lot No. 2 from Rufus H. Darby and wife for fifty (50) cents per square foot, including all improvements thereon, which consisted of a stable and some fencing. These defendants utterly disclaim any intention whatever to cheat or defraud the complainants or either of them in their enjoyment of the property conveyed by the said deed of June 5, 1900, in the said purchase of September 28, 1900, by the said Minnie D. Goldberg of part of the said lot No. 2. The defendant George Goldberg has no estate,
15 right, title, interest, or ownership of any kind or nature whatever, and never had any such, in the said part of the said lot No. 2 so purchased, as aforesaid, by the said Minnie D. Goldberg.

8. For answer to the ninth paragraph of the said bill of complaint, these defendants say that they deny the allegations thereof. They particularly deny any ignorance of the complainants, as alleged, and any and all fraud or wrongdoing on the part of these defendants, or either of them, as charged. They also deny that the defendant George Goldberg sent the said Richold to the said Jacob I. Shappirio either for the purpose alleged or any other purpose, but,

on the contrary, the complainants sent to the defendants an offer to resell to them the property covered by the said deed of June 5, 1900, which offer these defendants declined. These defendants occupied the premises included in the said deed of June 5, 1900, as tenants of the complainants, for nearly one year after the said sale thereof, paying therefor for most of the time as rent the sum of fifty dollars per month. When these defendants removed therefrom they did so because the complainants expressly refused a request by these defendants to reduce the said rent, and not for the reason stated in the ninth paragraph of the said bill.

10. Answering the tenth paragraph of the said bill, these defendants say that they deny the allegations thereof as the same are therein set forth. They particularly deny that the defendant George Goldberg caused a fence to be constructed around the said part of said lot No. 2, as alleged, but the defendant Minnie D. Goldberg erected a fence thereon. This fence does not make it impossible to use the kitchen of the said premises No. 1247, as alleged. It does, however, cut off the said part of the said lot No. 2, together
16 with the stable or shed thereon, from the said part of lot No. 28 included in the said deed of June 5, 1900, to which said part of lot No. 2 the complainants neither have nor ever had a shadow of right, title, interest, estate, lien, claim, charge, or demand, and of which they have never been in possession. These defendants deny that the said part of lot No. 2 was always used and occupied by the defendant George Goldberg as a part of the said premises, No. 1247. They also specifically deny that the said stable or shed or improvements was or were placed on the same by the defendant George Goldberg, but, on the contrary, the same was or were erected thereon by a former owner thereof some years ago at his own expense. These defendants deny that the defendant George Goldberg ever purchased the said part of the said lot No. 2. They also deny that he paid for the same from his own means. They also deny that he caused the title to *be* the same to be placed in the name of his wife, Minnie D. Goldberg. They deny that the sum of two hundred and fifty dollars was the purchase price. They positively deny the existence of any scheme to defraud the complainants, and deny that these defendants have in any manner or respect whatever defrauded the complainants or either of them. They deny that the defendant Minnie D. Goldberg has no interest in the said part of lot 2. They deny that she holds it for her husband or for any purpose of his. They deny that the purchase price thereof, which was paid by the defendant Minnie D. Goldberg alone and from her separate estate and means, was more than three times the market value of said property, but, on the contrary, they say that the same was entirely fair and reasonable, being only
17 fifty cents per square foot for the same, including all improvements thereon. They also deny that said purchase was made with any idea or purpose of defrauding or wronging the complainants or either of them.

11. For answer to the allegations of the eleventh paragraph of

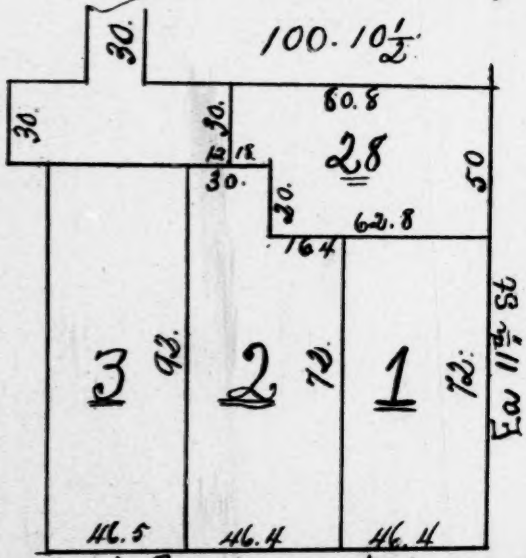
the said bill, these defendants say that the complainants intended to and did purchase only the property conveyed by the said deed of June 5, 1900. They deny that any part whatever of the said lot No. 2 was ever pointed out by the said defendant, George Goldberg, to the said Jacob I. Shappirio as constituting any part of the premises agreed to be sold, but, on the contrary, the said Jacob I. Shappirio was distinctly told by the said George Goldberg, before any agreement for purchase and sale was made, that the said part of the said lot No. 2 with the stable or shed or fence thereon, in the rear of the premises No. 1247, did not belong to the said George Goldberg and was not to be included in the said agreement. These defendants deny that the complainants have been put to great expense in the transfer or improvement of the property conveyed by the said deed of June 5, 1900, or in the payment of taxes thereon. They also deny that the complainants have been in any manner or respect damaged or injured by reason of the said purchase of the defendant Minnie D. Goldberg. They also deny that the complainants have any right whatever to the said part of lot No. 2, which belongs solely to the defendant Minnie D. Goldberg as her separate estate.

12. Further answering the said bill of complaint, these defendants say that they had for some years, and under agreement with the owner thereof, used the said shed or building on the said part of the said lot No. 2 for storage purposes; that they heard in the fall of the year 1900 that the said lot No. 2 was to be sold; that in order to retain the said rear part and shed, in which they had and ever since have had and still have various goods stored, the defendant Minnie D. Goldberg concluded to buy the same out of her separate estate if she could get it at a reasonable price, which she finally did, as hereinbefore stated. Her purchase had nothing to do whatever with the complainants or their property and they have no just cause for complaint by reason thereof against these defendants or either of them, particularly the defendant Minnie D. Goldberg, who had nothing to do with the transaction between the said George D. Goldberg and the complainants, except only to execute the said deed of June 5, 1900, solely as the wife of the said George Goldberg. The said part of lot No. 28 was subject to a deed of trust executed some years prior by the said George Goldberg, then a widower, and securing about $3,425.99, when the said agreement to purchase and sell was made, which debt was paid in full from the said purchase-money and the said deed of trust was released on June 5, 1900, to Odell S. Smith and Clarence F. Norment, trustees under a new deed of trust thereon, also of June 5, 1900, from the complainants to them. It is now impossible to place the complainants and defendants in *statu quo*. The complainants' prayers *c* and *d* are utter- inconsistent with each other and the said prayer *d* is inconsistant in itself and in the greater part beyond the power and jurisdiction of a court of equity.

And now, having fully and in detail answered the said bill of complaint and each and every paragraph and allegation thereof,

DEFENDANT'S EXHIBIT G. G. NO. 1.

Plat of original lots 1. 2. 3. and 28. in Square 977.



No. 1177 Chappino et al vs Goldberg et al } p. 20

these defendants humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

MINNIE D. GOLDBERG.
GEORGE GOLDBERG.

THOMAS M. FIELDS,
MILTON STRASBURGER,
Sol'rs for Defendants.

19 DISTRICT OF COLUMBIA, *ss:*

Minnie D. Goldberg and George Goldberg, being first duly sworn, depose and say that they are the defendants named in the foregoing answer by them subscribed; that they have read the same and know the contents thereof; that the matters and things therein set forth upon personal knowledge are true, and those therein set forth upon information and belief they believe to be true.

MINNIE D. GOLDBERG.
GEORGE GOLDBERG.

Subscribed and sworn to before me this 26th day of June, A. D. 1901.

J. R. YOUNG, *Clerk*,
By R. J. MEIGS, JR., *Ass't Cl'k.*

(Here follows diagram marked p. 20.)

21 *Stipulation of Counsel in Relation to Deed of Trust.*

Filed December 9, 1901.

Duplicate.

In the Supreme Court of the District of Columbia.

MARY SHAPPIRIO ET VIR
vs.
GEORGE GOLDBERG ET AL. } Equity. No. 22295.

Whereas after the complainant Mary Shappirio acquired the land described in the deed of June 5th, 1900, as referred to in the proceeding in this cause, she executed a deed of trust conveying same to Odell S. Smith and Clarence F. Norment, trustees, to secure Susan Frances Clark $4,500.00, payable in 3 years after date, with interest at the rate of 5 % per annum, and said deed of trust still remains upon said property, it is therefore stipulated and agreed between the attorneys for said parties that if the court shall hold that the complainants are not entitled to the relief asked in prayer C of their bill to establish a trust, but are entitled to the alternative relief in prayer D of said bill for a rescission then complainant Mary Shappirio, her heirs, executors, and administrators, shall have the right to and shall cause said deed of trust to be redeemed and discharged from said property before the defendant- *is* required to comply with the terms of said decree.

Provided, however, if the court shall decree a rescission, the defendant George D. Goldberg shall have the option, in complying with the terms of such decree, to take subject to or to assume said indebtedness or deed of trust instead of having it discharged.
22 If said Goldberg, his heirs, executors, or administrators, shall be unable or refuse to so comply and a sale should become necessary, then said property may be sold subject to the encumbrance of said deed of trust; but the defendants by this in no way admit the right of said complai nt to the relief as prayed, and nothing herein contained shall be taken or so construed, this stipulation being made solely to avoid the expense and delay of making said Odell S. Smith and Clarence F. Norment parties to this suit.

Prepared and submitted by complainants' solicitor and approved this 28th day of June, 1901.

THOMAS M. FIELDS,
MILTON STRASBURGER,
Solicitors for Defendants.
LEO SIMMONS,
For Complainants.

23 & 24 Filed December 9, 1901.

Loans negotiated; insurance placed in reliable companies; rents collected.

L. Richold, real-estate broker, room 13 Warder building, cor. 9th & F Sts. N. W.

WASHINGTON, D. C., *May* 11, 1900.

Received of Jacob I. Shappirio one hundred dollars as a deposit to be applied to the part payment of the purchase of No. 145, 1247 11th St. S. E., part of lot No. 38, square No. 977, improved by two-story brick buildings, sold to him for six thousand doll. ($6,000) *dollars* on the following terms: All cash. Property sold as a good title or money to be refunded and sale declared off. Seller and his agents assume no responsibility for cost of abstract nor for any damage by reason of said title proving defective. Purchaser required and agrees to make full settlement according to terms of sale within 30 days from the date of this contract or deposit to be forfeited. All taxes to be paid to date of deed. Vendor to give usual special warrantee deed. Conveyancing at cost of the purchaser.

L. RICHOLD, *Agent.*

For owner:
J. GOLDBERG, *Owner.*

Accepted by—

JACOB I. SHAPPIRIO, *Purchaser.*

(On margin: Accepted by —— ——, owner.)

* * * * * * *

25 TUESDAY, *July 16th*, 1901.

* * * * * * *

26 Whereupon MARY SHAPPIRIO, one of the complainants herein, being first duly sworn, testified as follows:

Direct examination.

By Mr. SIMMONS:

27 Q. Please state your name and residence. A. Mary Shappirio; residence, 412 Spruce street N. W., Washington, D. C.

Q. Mrs. Shappirio, you are one of the complainants in this case brought by Mary Shappirio and Jacob I. Shappirio against George Goldberg and wife? A. Yes.

Q. State to the court what you had to do, if anything, in reference to the purchase of the property involved in this litigation. A. I did not have anything to do with it. Mr. Shappirio said he would buy the house for me for a protection for myself and children, and explained to me how the house was situated. He said it had two stores, improved by two yards and two stables and one alley. That is all I knew about that part of the transaction.

Q. Did you examine any of the papers at all in relation to the case? A. No, sir; I did not.

Q. Where were you when you signed the deed of trust that was mentioned? A. I was at the Real Estate Title Insurance Company.

Q. You know nothing else about this property except what your husband told you? A. I do not.

Mr. STRASBERGER: Cross-examination and objections reserved for Mr. Fields.

Mr. SIMMONS: I again renew my objection to any cross-examination unless it is done today.

MARY SHAPPIRIO.
By J. A. SWEENEY, *Examiner*.

28 At the same time and place also appeared LEOPOLD RICHOLD, a witness produced in the same behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. SIMMONS:

Q. Please state your name and residence. A. Leopold Richold; residence, 1216 T street N. W., Washington, D. C. My business address is 1010 F street N. W.

Q. Mr. Richold, please look at the paper I hand you and state what it is (handing paper to witness). A. I know all about it. I went on the 11th of May, 1900, when Mr. Goldberg gave me the property for sale for $7,000, and I asked him what rent it would pay, and he said it would pay about $70, and I offered him $6,000 cash

and he accepted it, and I *say*, Now, before we go any further in this proceeding I wish you would sign an agreement that you authorized me to sell it at $6,000. What is your lot? I asked him. He said, 34 feet front by 80 feet, with the improvements thereon. I asked him the square and lot and he said 1245 and 1247—having an offer from Mr. Shappirio for $6,000. I asked the size of the lot and he said it was 34 by 80, with the improvements thereon.

29 Q. Who gave you that paper? A. I drawed up the paper and Mr. Goldberg and his wife signed it, and authorized me to sell it.

Q. Is that the paper they gave you (indicating same paper)? A. That is the original paper.

Mr. SIMMONS: I offer this paper in evidence, to be marked Exhibit "A."

The WITNESS (continuing): They authorized me to sell it for $6,000, with the improvements thereon, 34 by 80.

Q. Prior to that time had you been with any person to look at the property? A. Before the sale to Mr. Shappirio? No; he was the only customer.

Q. I mean prior to that time had you and Mr. Shappirio looked at the property? A. Yes; we looked at it before. I think it was on Sunday morning, if I am not mistaken.

Q. State what occurred at the time you and Mr. Shappirio went to look at the property, all Mr. Goldberg did and what he said. A. I and Mr. Shappirio went out and went in the store, and I told Mr. Goldberg, "Be kind enough to show Mr. Shappirio through the property," which he did.

Q. Then where did you go after that? A. We went upstairs and went all around in both houses and looked at all the rooms,

30 and then we went outside in the yard. I had a trouble. I was taken short with my urine. It jumps on me; and I left Mr. Shappirio and Mr. Goldberg alone together talking and looking over the property in the yard in the last house.

Q. You say you left them together in the last house. What do you mean—1245 or 1247? A. They were in the yard of 1247, in the rear.

Q. They were in the rear of 1247? A. Yes.

Q. What did you do after that? A. Well, I had to urinate, and I went down in one of the stables, and I believe I went in the last one. I cannot remember exactly.

Q. Did Mr. Goldberg point out the property to you? A. Yes. I asked him where could I go. It takes me on a jump. I did not know what to do. He says, "Go right there in that stable," and I left Mr. Shappirio and Mr. Goldberg to talk together.

Q. When you came out of the stable where were they standing? A. They were standing in the same place—right there in the yard.

Q. In the yard of 1247? A. In the yard of 1247.

Q. Did Mr. Goldberg state to you at any time whether or not the

stable at the rear in the yard of 1247 belonged to this prop-
31 erty? A. He did not.

Q. He didn't say it belonged to the property? A. I only asked him what was the size of the lot and the front and in the rear, with the improvements thereon.

Q. Did he say it did not belong to it? A. No; he never mentioned that, either. I never gave it an idea or the least consideration. When you tell me you have so much depth to the alley I thought he sold the whole business, and that was my idea. I thought it was all in there what was there.

Q. State who paid the money for the property to you, if anybody. A. Mr. Shappirio paid the money. I fixed it up in Mr. Ashford's office.

Q. Did he pay you any money before the deeds were made? A. Who?

Q. Mr. Shappirio. A. He paid me $100 deposit.

Q. Now, after that money was paid, what was done about the examining of the title; what part did you take in that? A. Mr. Shappirio authorized me to order the deed and attend to the whole business, and I did so, with no understanding that there was any trick behind it. I talk to you plain.

Q. Did you or Mr. Shappirio order the examination? A.
32 I ordered it.

Q. You attended to the whole thing? A. I attended to the whole business.

Q. Now, then, when did you see Mr. Goldberg after that? Did you go there again after that? A. How do you mean after that?

Q. Did you go there to collect the rent? A. I did, sir.

Q. You collected rents from Mr. Goldberg? A. Yes, I did.

Q. Now, how long did you collect rents after that? A. As long as he was in it. I think he was in it about a year, pretty much; not far from it.

Q. When did you first learn, if at all, that the property upon which the stable of 1247 stood and the back yard to that house was not included in the deed? A. About five or six months after the sale. I went there to collect the rent from Mr. Goldberg, and Mr. Goldberg was complaining about the water-closet, and he told me to attend to it. It looked to me it was not anything but an excuse to call my attention to the yard.

Q. What did he state then? A. Well, when we came out there to show me the water-closet, how it smelled and everything else, he says, "Here is a piece of ground that belongs to me."

33 Q. What ground was he referring to? A. Right where the stable stood of 1247. I could hardly speak, gentlemen, when he told me that on the start. Furthermore he said, "Well, if Mr. Shappirio wants to buy it he can buy it, and furthermore you can look at your deed and it don't belong to Mr. Shappirio." I thought, just about that time, if the ground would open I would want to go down, for such a deception as that.

Q. State whether or not Mr. Goldberg ever offered to, or stated he

would, purchase the property back from Mr. Shappirio. A. He said at the same time, "If he wants to sell I will buy it, but I won't give him what he paid for it." I said, "I don't suppose Mr. Shappirio is as hard up as that to give it for less than he paid for it." I could not talk to him any more after he told me the property did not belong to Mr. Shappirio. I could not talk another word. It was just like a death sweat came right out on me when he told me that, how he deceived him that way. If a man says he has so much to sell, that is the end of it.

* * * * * * *

34 Also JACOB I. SHAPPIRIO, one of the complainants herein, being first duly sworn, testified as follows:

Direct examination.

By Mr. SIMMONS:

Q. Please state your name and residence. A. Jacob I. Shappirio; residence, 412 Spruce street N. W., Washington, D. C.

Q. You are one of the complainants in this case in relation to the sale of the property known as premises 1245 and 1247 11th street S. E., are you not? A. Yes, I am one.

Q. Now, Mr. Shappirio, state as near as you can the transaction in relation to the sale of this property. A. Mr. Richold came to me and told me of two pieces of property on 11th street S. E., belonging to Mr. Goldberg, under the numbers of 1245 and 1247 11th street S. E., improved by two back yards and two stables and outlying to a back alley. I asked him what he wanted for the property, and he told me he wanted $7,000. I told him to go to Mr. Goldberg and make him an offer of $6,000, and in the meantime I would go and examine the property and see what it consisted of and see the location, &c.; so in the meantime I went over to Mr. Galloway, who is a contractor and builder here and a friend of mine, and I thought he would tell me the truth exactly what the
35 property was worth and whether it was worth $6,000 or not. I took him over there and introduced him to Mr. Goldberg, and I asked Mr. Goldberg to show us the house and also the yards and stables. So Mr. Goldberg took us out to the back way of 1247 11th street and he was standing in the back door leading to the yard and introduced us to his brother-in-law whose name is Isaac Roginsky. He told him to take us through the stables and show us everything that belonged to it. Mr. Goldberg was during the time standing right there and looking on what Mr. Roginsky was showing us. He took us into the larger stable and showed us what nice chickens we could raise and how large it was and what a spacious stable it was, and we could keep a horse and buggy there and any convenience we wanted; and then he took us out of that stable into the alley, showing us a 30-foot alley, and showing us a goat he had at the back of the stable at 1247 that was pasturing. Then he took us into the other stable from the alley, of 1245.

Q. He took you first into 1247? A. He took us first into the

stable of 1247 and from there through the alley, and then he took us into the 1245 stable; that is a much smaller stable; and I even spoke to Mr. Goldberg at the time, saying that if at any time I wanted to build a stable I could make one stable out of the two, which would make a right decent stable out of it, &c. Then
36 we came back to the original place. We came back to Mr. Goldberg and kept on talking about it. I told him I would see Mr. Richold and I guessed I would finish out the sale.

Q. Prior to that time had you been over to see the property with Mr. Richold? A. The only time I have been there was with Mr. Richold, the Sunday I came down there.

Q. That is the only time you had been there prior to that? A. That is all; I think, to the best of my knowledge, that is the only two times that I had been there at all; twice altogether.

Q. Before the sale? A. Prior to the sale.

Q. Now, you can state as near as you remember what Mr. Goldberg stated to you at the time you went over there with Mr. Richold, while you were standing in the back yard. A. Well, he told us, "Well, I have got two nice houses and two nice stables and I have a nice piece of property," and he said he thinks it is worth a good deal more money and hopes that I would make money on it.

Q. Did he say to you that this piece of property on which the stable of 1247 was located was all a part of the property? A. No, sir; he never said anything of the kind. In fact there wasn't
37 anything to signify that it did not belong to it, because there was no fence, and he was using the stable all the time there, and there would not be any question entering our mind to ask it. If I saw a fence there, on that part of the ground, fenced off, I would have cause to ask the man whether it belonged to him or did not, or cause to have suspicion. I did not see any fence and the stable connected with the house and the man pointed it out as belonging to the property, and I had no reason to ask him anything else.

Q. Did he point it out as a part of the property? A. Yes; he pointed it out. He pointed it out himself as well as his brother-in-law. He told his brother-in-law to take us out and show us all around.

Q. Did you have anything to do with the examination of the papers or the title to the property in any way? A. No, sir.

Q. Whom did you leave that to? A. I left it to Mr. Richold; that was on account of me being occupied on 11th street in business, and I did not have the proper time to attend to it, and I thought I better give it to a man who is more able to attend to it than I was, and I depended solely on Mr. Richold.

Q. Did you have any reason to believe that the statements made to you by Mr. Goldberg in relation to the size of the property and the yard were not so? A. No, sir; I did not have any reason to believe that at all. Why should I? I knew Goldberg for
38 several years when he used to be on D street. I never had any transactions with him that I knew of, but I didn't have any reason to believe the man would defraud me in any way or tell me an untruth.

Q. Did you place confidence in him? A. I placed confidence in Mr. Goldberg that he would give me what belonged to me, and it was a long time before I became aware of it that it did not belong to me as he claimed.

Q. State what was your object in having Mr. Richold attend to the papers. Was it because you suspected anything wrong or was it simply because it was the usual mode of examining the title? A. No, sir; it was because I myself had no experience in buying property, and I did not know as much about it as a man attending to that class of business, and I relied on Mr. Richold, because he knew how to attend to it and how to examine it, and to see I was getting everything that was represented to me. That is why, and because it would require a good deal of time to look at the records, &c., and I thought Mr. Richold being at the business all the time that is the reason I gave him control of it.

Q. You knew at the time that Mr. Richold was the agent of Mr. Goldberg? A. Yes; I knew it.

Q. Had you had any experience in such matters as this?
39 A. I never had much experience, with the exception I bought the house on Spruce street.

Q. Before or since then? A. Before then, the year prior to this purchase; and even then I depended solely on another man in the same way I did in this case. I depended on a Mr. Chesley, who attended to all this for me.

Q. How long ago was it since you first learned about this? A. To the best of my recollection, it was about the last part of September or the first part of October that I commenced to hear—the only way I learned—it was a long time before Mr. Richold told me, because he was ashamed to tell me. He kept away from me for a long time. Mr. Richold would not come near me for a couple of months after he found out that that piece of ground, as Goldberg stated, did not belong to me, and it was not included in the sale. He kept away from me. He was afraid to face me, and sent me a check for the rent instead of bringing it himself. I will tell you how I came to find out. The only way I came to find out, that same Roginsky came around to a brother-in-law of mine and said——

Q. You cannot state what he said. A. That is all I heard. Of course that was only a suspicion, and I did not know until Mr. Richold came down to my—I intended to send for him and
40 I did not see him come down to pay the rent, and one day I saw him pass by and I called him over and I said, "Mr. Richold, have you been down lately at 11th street?"

Q. You cannot give the conversation. A. Well, Mr. Richold said to me that Mr. Goldberg told him to tell me that the piece of ground in the rear of 1247, together with the stable, was not included in the sale. That was some time in October.

Q. Now, state whether or not there was any offer made by or proposition that came from Mr. Goldberg to buy the property back from you. A. I want to state to you, after he told me that, he says that Mr. Goldberg told him to tell me if I wanted to sell the prop-

erty he would buy it back from me at a loss. I says, "You tell Mr. Goldberg that I did not buy it to lose anything on it. I bought it to make, and if at any time he wants me to sell and will pay me a profit on the property I will sell it to him." And at another time he also sent Mr. Guy, of Guy, Curren & Company, to Mr. Richold to ask him whether I would not sell the property, to which Mr. Richold gave him the same answer as I told him to tell him before.

Q. Was the offer to sell at a loss each time? A. Yes.

Q. When did Mr. Goldberg vacate the property, if at all?

41 A. He vacated it, I think, on May 6th, 1901, or thereabouts.

Q. Have you ever been able to rent the property since then? A. No, sir; I have not.

Q. What is the condition of the back yard now? A. Well, it is all fenced up. It is a very hard matter to rent the house without a back yard to it. That is the condition of it. The yard is cut off and the window is shut off—that is, half the window—from the light.

Q. Have you tried to rent the property to any one since then? A. I tried. I gave it to an agent.

Q. State whether or not you had any objection from parties who desired to rent on account of the back yard being in that condition. A. Only the man next door, Mr. Sakolsky, who wanted to rent the building, and he only offered me $40 for the two houses, stating there was no back yard and no convenience.

Q. Did you read over any of the papers before they were delivered to you and before you paid the money? A. The only thing I had was the trust. I examined the trust, because I had to sign my name to it to be liable for the indebtedness on it. I read it over. The other papers I did not examine, because I did not have any suspicion to examine them.

42 Q. What part of the trust did you examine? A. The trust where I am indebted for $4,500.

Q. That was the principal part, to see how much you owed? A. Yes.

Q. Did you know anything about the description in the trust at all? A. No, sir; I did not follow that up at all. I only read the description of the amount of indebtedness. That is all. That is the only thing I cared to look at.

Q. It is denied in the answer of Mr. Goldberg that you are a citizen of the United States. What do you say about that? A. Well, I guess they can very easily find it there in court.

Q. When were you naturalized, if at all? A. I don't remember the date.

Q. How many years ago? A. I guess about seven or eight years ago; fully that.

Q. Where did you obtain your papers? A. Right here in the district court, before the Honorable Justice Cox.

Q. When did you first discover that there was a fence built in the back yard of 1247—a new fence? A. About two or three days

after Goldberg had moved out. I went in to see the condition
43 of the property after he moved out and I looked through all the rooms, and I also went out in the yard, and, to my surprise, I found the fence there.

Q. Did you have any investigation made to find out what he said about the lot or the part of the lot at the back of 1247 not being in your deed? A. Did I have any investigation?

Q. Yes. A. When? After finding it out?

Q. Yes. A. Well, as soon as I had heard Goldberg's statement that that ground did not belong to me I went to find out whether the piece of ground belonged to me or not. I went over to the District building and came over there, and in fact I asked somebody to inquire for me. I did not have the time to do it.

Q. State whether you were fully aware of the fact at that time and prior to the time you saw the fence there. A. No, I was not fully aware of it. Just as I told you, I tried to investigate it then, but I could not get anything definite. I did not know anything definite really that it was in question until the fence was put there. I thought probably it was only a scheme—talk—trying to frighten me into something.

Q. State whether or not Mr. Goldberg before vacating the premises made a request to you to reduce the rent. A. He did.
44 He came to me personally and asked me if I would not reduce the rent, or, if I did not want to reduce the rent, to let him have the larger store, which was 1247, at the rate of $25 a month. I told him, "Mr. Goldberg, I cannot possibly do anything of the kind; first of all, I don't want to bother with two tenants; and, secondly, you know it is worth more than $25 a month. It is the largest building of the two, having a stable to it and a large yard, &c." I says, "I am sure it ought to be worth at least $35. If you want it for $35 I might take it under consideration, but if you only want to pay $25 I would not take it under consideration." And he says, "If you don't want to do that, I will have to move."

Q. Did he state anything at that time about the yard not being a part of the property? A. He did not even tell me then. Goldberg never stated at any time that that piece of ground did not belong to me, even after I found it out. I haven't seen him since the fence was put on there, but he himself never came and told me that that piece of ground did not belong to me at any time from the beginning of the transaction until today, because after finding the fence there I went over to see Mr. Goldberg to ask what the fence meant and saw his brother-in-law. I did not think it was worth while to talk to his brother-in-law. And I went to him and I haven't seen Mr. Goldberg since.

Q. State whether or not, if Mr. Goldberg had pointed out to
45 you and told you that that part of the lot in the rear of 1247 did not belong to the premises, you would have purchased it at the price you paid. A. No, sir; I would not. I would not buy the house without a back yard to it or any outlet to it.

Q. State whether or not it is possible for you to go out of the back

door or either of the two kitchens of the premises 1247. A. No, sir. The way it *it* is situated you cannot open the back door at all. You cannot go out, because the fence is right—there is hardly room enough for a human being to squeeze in between the wall and fence. There is no possible outlet to it.

Q. State whether or not the blinds to the back building can be closed or opened. A. No, sir; they cannot.

* * * * * * *

46 WEDNESDAY, *July 17th*, 1901.

* * * * * * *

RUFUS H. DARBY, a witness produced in the same behalf, being first duly sworn, testified as follows:

* * * * * * *

Q. Mr. Darby, are you familiar with the piece of lot at the rear of lot 2, in square 977? A. I haven't seen it over three times, probably not more than two.

Q. Look at this plat that is attached to the answer, and which contains lots Nos. 1, 2, 3, and 28. A. I am not familiar with the plat enough. I know it is a back lot. Lot 2, square 977, I had it. I am not familiar with the lot, only it was a back lot.

Q. It was part of lot 2, in square 977? A. I am not certain about that. That is the only way I had it.

Q. Part of lot 2, square 977? A. Yes.

47 Q. Did you ever make a deed of that piece of lot to any one? A. Yes.

Q. To whom did you make the deed? A. To the best of my recollection, it was made to a Mrs. Goldberg.

Q. Who negotiated the purchase of this piece of lot from you? A. Mr. Goldberg.

Q. Do you know his full name? A. I cannot call it now; I don't remember it. I didn't pay any attention to it. I understand he kept a store in the front part.

Q. The front part of the lot? A. Yes.

Q. When was it he first called to see you about that piece of lot? A. I cannot tell you exactly.

Q. About how many years ago? A. I cannot state that exactly. It was several years ago. He had been talking about it for some time.

Q. Was it more than five years ago? A. I would not like to say that.

Q. Was it more than three? A. I am not positive about that. I know it was under consideration for some time.

48 Q. Give us, as near as you can, about how many years ago it was before you made the deed. A. I cannot state positively.

Q. Could you state whether it was more than one year? A. It was more than one year.

Q. Now, state what he paid you for that piece of lot. A. $300.

Q. Did he pay you in cash? A. Yes; he gave me, on August 25th, $20.

Q. Did you give him a receipt for that? A. Yes.

Q. How did you make that receipt? A. I cannot tell you that now. And on October 2nd, 1900, he paid me $260. The difference was back taxes.

Q. You deducted back taxes? A. Yes; I was to give him a clear title to it.

Q. Did he state to you at the time he bought the lot that he had possession of it? A. I don't recollect.

Q. How did he pay you that money? A. In cash.

Q. When was the first time, if at all, that he mentioned Mrs. Goldberg's name? A. About the time of the final settlement.

Q. He didn't mention her name before that? A. No, sir; not that I have any recollection of.

Q. Did he tell you to make the deed to Mrs. Goldberg? A.
49 & 50 He must have done it; the deed was made that way. I think he had the deed drawn himself, or his lawyer. It was immaterial to me. I was selling the lot.

Q. State whether or not you considered that a fair price for the piece of ground, or whether it was a high price for it. A. Judging from the land around there, I think it was a high price. It was a small piece of land.

Q. What did he say to you, if anything, while negotiating with you about the value of that piece of land? A. That I was charging him an outrageous price for it.

Q. State what he said, if anything, to indicate that it was necessary for him to have the piece of ground. A. I don't recollect that he did say anything. It struck me that he did because he was so persistent in coming after it. He made me several offers much below $300. I told him finally that he need not bother me any more; that it was a small piece of ground and a small sum of money, and he need not bother me any more about it.

Q. Do you remember what the first offer he made for it was? A. I cannot say. He made several offers.

Q. State in proportion, if you can, about what they were as compared with what was paid for it. A. Well, I know the first offer was nothing like what I got for it.

* * * * * * *

51 ALFRED NALLEY, a witness produced in the same behalf, being first duly sworn, testified as follows:

* * * * * * *

Q. Mr. Nalley, are you familiar with the premises 1247 11th street S. E.? A. Yes.

Q. State whether or not you ever occupied those premises. A. I did in 1894, '95, and '96.

Q. I hand you a receipt dated August 1st, 1894, which is in the following words: "Received of A. Nalley thirty dollars for house rent, in advance, of house No. 1247 11th St. S. E. Received pay-

ment, G. Goldberg." State who gave you that receipt. A. Mr. Goldberg himself.

Q. Did you see him write his name to that paper? A. No, sir.

Q. Do you know his signature? A. I don't know his signature.

Q. Did you ever see him write? A. I never did.

52 Q. Where did you obtain those receipts? A. At the store.

Q. Who handed them to you? A. He did.

Q. He did himself? A. Yes.

Q. Was that rent for the premises 1247? A. Yes.

Q. For the month of August, 1894? A. That is right.

Mr. SIMMONS: Now, I offer that receipt in evidence, to be marked Exhibit B.

Q. The next receipt is November 1st, 1895, and reads the same way as the other, and is for $25 for rent of the same premises, 1247 11th street S. E. "Received payment, G. Goldberg." Who gave you that? A. He did.

Mr. SIMMONS: I offer that in evidence, to be marked Exhibit C.

Q. Here is another, dated June 1st, 1896, and reads, "Received of A. Nalley $25 for house rent, in advance, for house No. 1247 11th street S. E. Received payment, G. Goldberg." Who gave you that paper? A. He did.

Q. And that was for the rent of 1247 11th street? A. Yes.

Mr. SIMMONS: I offer that in evidence, to be marked Exhibit D.

53 Q. Now, Mr. Nalley, state as near as you can what conversation you and Mr. Goldberg had in relation to that place when you first went there as to stables, &c. A. Well, I told him if I took that place I would have to have a stable to put my horses in. He told me that if I would build one back there I could do it.

Q. Then what was done? A. He got this man Selby to build it.

Q. Did he build it after you moved in or before? A. While I was moving in; it was going on.

Q. Did Mr. Goldberg come on the place while it was being built? A. Yes, he came down there once, and Selby had to go for the permit, but he did not get it right, and he found out the mistake, and Goldberg went the second time and got it himself, if I am not mistaken about it.

Q. Who employed the man to put this stable up? A. Goldberg.

Q. And that was just about the time you first moved in? A. During the time I was moving in.

Q. And according to that receipt it would be in August, 1894? A. Yes.

Q. Was that the first receipt he gave you? A. I don't remember whether it was or not. There are a lot of them home now, and I took the first three that came to my hand.

54 Q. How long did you occupy the property? A. That I cannot tell you. I cannot tell you exactly how long I occupied it.

Q. You may state whether or not it was a year, two years, or more. A. Well, I suppose I must have been there two years, or mighty near it, anyhow.

Q. The first receipt which you have produced here is August 1st, 1894, and the last one is June 1st, 1896? A. Yes.

Q. You occupied the property the entire time these receipts cover? A. Yes.

Q. For what purpose did you use the place that was built during your tenancy? A. The stable?

Q. Yes. A. I used it for a stable.

Q. Did it have an alley to the back of it? A. We had to come out on the T of the alley, where the alley turned. That was the entrance to the stable.

Q. Do you know from whom Mr. Goldberg acquired that piece of property at the back of 1247? A. He got it from Mr. Gates.

Q. Do you know Gates' first name? A. Nelson, I think, if I am not mistaken.

55 Q. Do you know what he paid for it? A. I don't know exactly. I cannot say.

Q. Do you know that he bought it from Mr. Gates? A. Mr. Gates told me that he sold him the privilege of it; that was all.

Q. Have you been acquainted with that place ever since you vacated it? A. Oh, yes.

Q. State who occupied it after you left the property. A. Goldberg did. He had it repaired and moved in there himself.

Q. State whether or not he occupied this stable and the yard to the property. A. He did occupy it.

Q. The entire time after you left it? A. After I left it.

Q. What was the condition of the back yard when you rented it from him? A. Well, there was a yard there.

Q. Fenced in? A. Fenced in.

Q. State as near as you can about the depth of the yard to this house. A. About thirty feet, I judge.

Q. Mr. Nalley, I hand you a photograph or paper purporting to be a photograph of the back stable, or the stable in the rear
56 of 1247 (handing photograph). A. That is it.

Q. State whether or not you recognize that as the stable you used. A. Yes.

Q. That is the place? A. That is the place.

Q. And that is the stable that was built—— A. For me.

Q. For you? A. Yes.

* * * * * * *

57 BENJAMIN S. SIMMONS, a witness produced in the same behalf, being first duly sworn, testified as follows:

* * * * * * *

Q. State what your business is. A. Architect.

Q. I show you a plat which is marked Complainants' Exhibit D to the bill, and I will ask you to state who made that plat (showing said exhibit to witness). A. I made it.

Q. Are you acquainted with the premises 1247 11th street S. E.? A. Yes; I visited there three times making this plat.

Q. Have you the measurements of the house 1247, the walls, &c.? A. Yes.

Q. State what is the length of the south wall from 11th street. A. The south wall is 62 feet and 5 inches from the front to the back, as near as I could measure.

Q. Now, state to the court which one of these diagrams on this plat, the one to the right or the one to the left, is the diagram
58 of the premises 1247 11th street. A. The one to the left (indicating on plat).

Q. State which part of that, the upper part or the lower part, represents 11th street. A. The lower part represents 11th street as it stands there.

STIPULATION.—By consent of counsel the numbers of the houses and the street are marked on the plat by the witness.

Q. Now, what is the distance from 11th street on the south wall of the house 1247 11th street to the rear end of it? A. 62 feet and 5 inches.

Q. What is the condition of the back yard to those premises? A. The back yard of 1247?

Q. Yes. A. There has been a fence built across the yard about 12 inches from the back wall; evidently a new fence.

Q. Is it possible for a person of ordinary size to get between the wall on the rear of 1247 11th street and the new fence which you state has been built there? A. No; while the fence is 12 inches away from the wall, there is a top and bottom rail to it that projects two inches towards the house, and there is a four-by-four post about the center of the fence projecting toward the house, which makes it impossible to pass.

59 Q. What effect has that on the doors and windows of the lower part of the house? A. I never tried the blinds, but I don't think they could open or close in that space. The blinds were open, and I did not try to close them.

Q. Now, in the rear of this plat you have here, marked "shed," what kind of a structure is that? A. To the best of my recollection, it is a frame structure with a tin roof. It looks as though it was used for a stable.

Q. On the rear I think you have another place marked "shed." What kind of a place is that? A. That is a frame building, I judge, about seven and a half feet high.

Q. What was that used as? A. That was used as a summer kitchen or something of that sort.

Q. Which way does the door of that summer kitchen front? A. The door to that summer kitchen leads directly towards the fence.

Q. Is it possible to pass in and out of that door with the fence there—that is, an ordinary-sized person? A. You can barely get out of the door. That is all I can say.

Q. You can get out of the door, but you cannot walk around? You cannot pass between the fence? A. No.

60 Q. I show you a photograph, marked Exhibit E, of that place. Marked Exhibit E. State whether or not you recognize the line of the fence on it (handing photograph to witness). A. Yes; I do.

Q. Please mark the fence.

(The "fence" is marked "fence" in red ink on photograph.)

Q. Now, look at the photograph and see if you recognize the stable or shed at the back. A. Yes; that is it (indicating, and marked "stable" in red ink).

Q. Now, look at it further and see if you recognize the small summer kitchen or part of it on the photograph. A. Yes; this is the outside edge of it right here towards the fence (marked "summer kitchen" in red ink).

Q. Now, look at that photograph and see if you recognize the rear wall or corner of the rear wall of 1247. A. Yes; this is the northwest corner of 1247 (indicating and marked "northwest corner of 1247" in red ink).

* * * * * * *

61 THOMAS F. GALLOWAY, a witness produced in the same behalf, being first duly sworn, testified as follows:

* * * * * * *

Q. Please state your name and residence. A. Thomas F. Galloway; 712 O street; junior member of the firm of Galloway and Son.

Q. Mr. Galloway, state what business you are engaged in. A. Contractor and builder.

Q. Are you familiar with the property known as 1247 11th street southeast? A. Yes.

Q. State whether or not you have been in the premises named, and why you went there. A. I have been there several times.

Q. The first time. A. Shall I tell you exactly the way it occurred?

Q. Yes; in your own language. A. I did all Mr. Shappirio's work, and while he was buying that property or about the time he bought it—I could not tell you the date now; I don't know, in fact—he asked me one day to go down and look at it and see what was necessary to be done so as to put it in good order. I went down, and we met Mr. Goldberg there and his brother-in-

62 law, and we got talking about the property and one thing or another, and finally Mr. Goldberg turned around to his

brother-in-law and says, "You take Mr. Shappirio out and show him the property." Of course I naturally went along because I wanted to see the property, and if I had to do any work there I wanted to know what I had to do. Mr. Goldberg went back to the rear door, and Mr. Goldberg's brother-in-law went out in the rear with us, and he carried us out and showed us the property, and, among other things, he showed us the stable on the south lot, and the reason I remember it so well was he said, "Look out for the bull-dog; don't get too close to the stable, or the dog might bite you;" and he said the stable belonged to the property—the carriage-house to the stable. He said that was part of the property, and he explained to Mr. Shippirio and myself how nice it would be in case anybody wanted to keep a horse. He had a lot of chickens and ducks all around there, and showed us the entrance to the property, and carried us to the other lot and showed us that—the north lot—and said the frame stable on the north lot did not amount to very much, but he said it would do, in case of emergency, to keep a wagon or something of that kind in; and he carried us out of that and showed us the entrance to the rear, and he went over and showed us a large alley, he said, came clear through the lot and came clear to the south, which street I don't know, but
63 he explained the whole thing to us and practically told Mr. Shappirio in my presence that both those stables belonged to the property he was buying.

Q. Where was Mr. Goldberg while you were examining the property? A. As near as I remember, on the south house there is a little frame outbuilding built on the north side of the south house and which has two entrances, one on the north of the yard and one on the south of the yard, and he stood in the south door while his brother-in-law was showing us the stable and what improvements there were on it.

Q. State whether or not there was any fence, dividing fence, between the premises 1245 and 1247. A. There was a part of a fence between the north and south house.

Q. How much of a fence? A. Well, I don't know. It ran back, I guess, to the rear of both kitchens. It did not run all the way back. It ran as far as both kitchens.

Q. The back yards were all in one? A. All in one; that is my recollection of it.

Q. Now, I show you a photograph marked Exhibit E (handing to witness). Look and state if you recognize that as the rear of the property you have reference to. A. This is the rear of the south lot. There is where the bull-dog was chained, that little opening there (indicating). This is the extreme southwest corner of the south lots. There is where the bull-dog was. He
64 said, Look out; the dog will bite you. This is the stable he showed us; that was the best one of the two. That is the stable on the south lot (indicating part of photograph marked in red ink "stable"). And that is the gate that went into that stable (indicating gate marked "gate to south stable").

Q. Look at that part of the photograph that is marked in red ink "stable" and state whether that is the place you went into. A. That is the one where they had the chickens and ducks in, and that is the one he said would make a nice stable for any one that chose to occupy the premises. Here is the little house I was telling you about (indicating).

Q. That small summer kitchen, is that the little house? A. That is the little house (indicating part marked "summer kitchen"), the side that has the south door to it.

Q. Could he, Goldberg, see you all as you were walking there? A. Yes; there was no fence to obstruct the view and he could see the whole thing.

Q. Now, state when you examined the property again lately. A. What do you mean by that, Mr. Simmons?

Q. Have you been there since Mr. Goldberg vacated the property? A. Yes, and I did some work there—repairs.

Q. How long ago did you go there? A. Well, I would
65 have to refer to the books.

Q. State about how long. A. About six or seven weeks ago. I cannot state exactly; I don't know.

Q. What was the condition of the yard as to finding it fenced? A. I found it fenced on the north and east side; that piece was fenced off (indicating).

Q. On the north and east side? A. Yes.

Q. How far is that new fence from the back of the building of 1247? A. Well, I don't know; about twelve inches I should say. I haven't measured it. I just happened to notice it was there; that is all.

Q. State what in your opinion, if anything, would be the damage by cutting off the rear part of the lot to this property. A. The actual cost of that piece of ground or the damage done to the property?

Q. Damage done to the property. A. If it was my lot I would not have it cut off for $1,000, because there is no rear entrance to it at all. You cannot even close your blinds in the rear of the property. I would value that at $1,000 if it was mine. You can-
not even close the blinds, as they are open now, and you
66 could not get them shut—they were the last time I was down there.

Q. I show you a plat marked Exhibit B to the bill. State whether or not that shows a diagram of the property about the way it is situated to the best of your recollection. That red line is the new fence. A. I know it is; that is the little shed (indicating part marked "shed" next to 1247). There are two doors to that; there is a door here and also a door here (doors marked "west door" and "east door"). He stood in this door (west door); that is the east door and that is the west door; that is the west door he stood in. Right here is the cellar going down (east of part marked "east door"), going down to the back building. There is a cellar there. There is a wooden door right over the top of the

cellar entrance—a pair of wooden doors to the cellar under this part of the house there (indicating). Now, there is a door coming out here (indicating); that is the kitchen in here (indicating door from small shed); that is 1245 (indicating). We went in the front door of 1247—went through the whole building of 1247—went out of the kitchen door on the north of 1247, through the west door in the shed of 1247, out into the rear yard of 1247, through the stable of 1247, out in the alley. There is an entrance here (indicating side of shed of 1247 in rear). We came back through the shed of 1247, crossed the yard at 1245, went out through the door and through the
67 shed of 1245 into the alley, and he showed us a wide alley running through there and said it ran all the way through the square. I found out afterwards it did not. He brought us back through the shed of 1245, through the kitchen of 1245, and upstairs all through the second story of 1245, and then we came down to the first story of 1245, through the store of 1245, back to the store of 1247, and saw, I don't know whether it was Mr. Goldberg's wife or his brother-in-law's wife, but there was some lady there with a baby in the store of 1247, and then we left through the same entrance at 1247, and we cleared out and went about our business.

Q. Now, Mr. Galloway, I want you to make that plain in relation to Mr. Goldberg's accompanying you, and how far he went. A. He did not go, to my recollection, any further than the west door of that shed of 1247.

Q. Was he there when you returned, coming back? A. No; we went through 1245, and he was back in the store of 1247 when we returned.

Q. After you went out into the shed of 1247 and returned, was he still in the door then? A. Yes. He said, "Show them everything." That is as near as I remember what he said. I think that was correctly what he said, "Show them everything," or "Show Mr. Shappirio everything." I don't know exactly. It was either that
68 or "Show Mr. Shappirio everything;" and his brother-in-law, as I stated, carried us to 1245 and carried us back to the store of 1247, through an archway between the stores.

Q. Through an archway between the stores? A. Yes; and this lady with the child was in 1247 when we returned.

Q. Does that red line indicate the new fence? A. Yes; the red line indicates the new fence (on Exhibit "B").

Q. From the small summer kitchen as indicated there? A. Yes; to this shed of 1245 (indicating).

Q. Was there any fence between there at the time you looked at it first? A. Not when we looked through there.

Q. The two yards were practically one? A. Yes. You could walk all around there.

Q. Now look at this photograph marked Exhibit C to the bill and state whether or not you recognize that as being the back yard of the premises 1247. A. This is the rear of house 1247 there (indicating part marked in red ink "rear of house 1247").

Q. Point out the fence that has been built there. A. This is the fence from here across that has been built, and from here back to the shed. This is the cross-fence (indicating length of photograph), and this is the dividing fence (fence running with breadth of
69 photograph). Now, there is the door I was speaking of in the shed when he said "Show it all to them." That is the little shed he stood at the time his brother-in-law showed us all around. That is the west door where he stood and we were looking at the property (marked on Exhibit C to bill "west door where Goldberg stood while witness looked at property;" and new fence marked in three places in red ink "fence" on same photograph). This is the summer kitchen (marked "summer kitchen").

* * * * * * *

70 MONDAY, *July 22nd*, 1901.

* * * * * * *

JOHN H. GATES was produced in the same behalf, —, being first duly sworn, testified as follows:

* * * * * * *

Q. Mr. Gates, do you know the location of the premises formerly occupied by Mr. George Goldberg, 1245 and 1247 11th street S. E.? A. Yes.

Q. Do you know the location of lot 2, in square 977, which is on N street, just south of that? A. Yes.

Q. Now state, as near as you can, what you know about the rear of this premises, 1247, which is a part of that lot 2. A. Well, at the time they cut the alley down, on account of this being private property, the contractor left a lump of dirt there, and after a certain length of time Mr. John T. Campbell goes in there and cuts
71 this lump of dirt away and carries it into his lumber yard to fill up a low place; and—I won't state of my personal knowledge, only what my father told me—he fenced this piece of ground in after this bank was moved away, and he also informed me that Mr. George Goldberg gave him $30 for his right to this piece of lot.

Mr. FIELDS: All of the testimony of the witness which is founded upon what his father told him is objected to as incompetent.

Q. What was your father's name? A. John N. Gates.

Q. State what property your father had possession of there. A. He had possession of a portion of lot 1, in square 977, and all of lot 2, in square 977.

Q. Now, state about what time it was, as near as you can recollect, when this bank was cut away. A. Seven or eight years ago. That piece of ground that was fenced in and that lump of ground was left when the alley was cut through in the eighties.

Q. Do you know when your father bought lot 2, in square 977? A. 1885 or '6; somewheres along there.

Q. How long after that was it before he took possession of lot 2; how many years? A. Took possession of this piece?

Q. When he took possession of the whole of lot 2? A. I
72 don't exactly understand the question.

Q. How long after he bought the ground before he took possession of it and built the house there? A. Maybe a couple of years.

Q. Then how long after that was it before the bank of dirt was cut down? A. Six or seven years.

Q. And you say he took possession right after the bank was cut down? A. Yes.

Q. Do you know when Mr. Goldberg built the store now at 1247? A. I cannot say.

Q. You don't know what time it was? A. No, sir.

Q. Who had possession of that piece of lot at the time Mr. Goldberg built there? A. I think that bank of dirt was there then.

Q. Do you know when Mr. Goldberg built the house there? How many years after your father bought the property—lot 2, in square 977? A. About four or five years.

Q. Who occupied the property where this piece of ground is in 1247 from the time your father turned the possession over to Mr. Goldberg? A. Who occupied the dwelling there on lot 2, do you mean?

73 Q. No; who occupied this little piece of property where the bank was after your father turned it over to Mr. Goldberg? A. Mr. Goldberg did.

Q. How long did he occupy it, do you know? A. Up to the time he sold it.

Q. Now, do you know who built the stable on the back part of the lot where this little piece of property was? A. I don't know. It was always said to be Mr. Goldberg's stable.

Mr. FIELDS: That is objected to as hearsay.

Q. Are you familiar with the back yard of these premises, 1247, where Mr. Goldberg lived? A. Yes.

Q. Now, you can state whether you know of your own knowledge whether he occupied that as his stable and yard. A. Yes.

Q. From the time your father turned it over to him till he sold it? A. Yes.

Cross-examination.

By Mr. FIELDS:

Q. I believe your father is dead, Mr. Gates? A. Yes.

Q. When did he die? A. It will be three years the four-
74 teenth of this September coming.

Q. Do you know who owned lot 2 before your father bought it? A. I do not.

Q. Did your father buy lot 2 before or after Goldberg bought his property? A. I think he bought it before. I think so. I won't be certain.

Q. Did Goldberg have either one of these stores constructed there at the time your father bought lot 2? A. I think not.

Q. Suppose Goldberg bought this property in 1879? A. He bought the property considerable time before he built.

Q. Then Goldberg bought his property before your father bought lot 2? A. If he bought in 1879 he did.

Q. Is it your present recollection that Goldberg had not erected the brick buildings before your father bought? A. I don't think he had.

Q. Suppose those buildings were erected there by Goldberg in 1883? A. If Mr. Goldberg's buildings were erected in 1883, why then were erected then before this house on lot No. 2 was erected.

Mr. SIMMONS: I want to object to that question and answer on the ground that the attorney is putting a hypothetical ques-
75 tion based on facts that have not been shown to exist, and without there being any foundation for it.

Q. Goldberg never had possession of the rear part or strip of lot 2 before your father bought it, did he? A. No, sir.

Q. How long after your father owned it before possession was turned over to Goldberg? A. Three or four years.

Q. Was it graded at the time your father turned it over to Goldberg? A. Yes, sir.

Q. Mr. Campbell graded it, did he? A. Yes.

Q. Were there any improvements of any kind on the rear part of lot 2 at the time it was turned over to Goldberg? A. I think not.

Q. Do you know whether your father rented it or leased it? A. He just erected a fence around it and enclosed it and made it a portion of the yard of lot 2.

Q. Who erected the fence? A. My father.

Q. Your father did? A. Yes; and after he had it enclosed that piece would make Mr. Goldberg's lot square out to the alley. As I said before, I am not stating this on my own responsibility. I only know what my father told me.

76 Q. You don't know?

By Mr. SIMMONS:

Q. The question as to whether your father sold it to him is what he told you? A. Yes.

Q. You know about the possession yourself? A. Yes. My father told me about getting $30 from Mr. Goldberg for possession of this piece of ground.

By Mr. FIELDS:

Q. What I want to ask you is this: Have you any personal knowledge at all of the arrangement or understanding between your father and Goldberg by which the possession of this strip of ground was turned over to Goldberg by your father? A. Only what my father told me.

Q. Now, how long after that strip was turned over to Goldberg was it before this shed or stable was erected? A. Soon afterwards, I think.

Q. Do you know who built it? A. I do not.
Q. Did you ever hear your father speak about that stable? A. No.
Q. Did you ever hear Goldberg speak about it? A. No, sir.
Q. You don't know of your own personal knowledge
77 whether your father built it or not? A. Father did not build it; he just enclosed it.
Q. From all you know, might not your father have paid for it? A. For the stable?
Q. You don't know one way or the other, do you? A. The stable was erected after he told me that he had sold his right to Mr. Goldberg.
Q. Now, suppose it turns out that your father never did sell it to Mr. Goldberg——

Mr. SIMMONS: I object to that line of cross-examination on the ground that it is based on supposition and there should be some foundation for it.

Q. What I want to ask you is this: Of your own personal knowledge can you say that your father did not build or pay for that stable? A. I think I can.
Q. Of your own personal knowledge? A. Yes.
Q. Now, give me the grounds upon which you base that statement. A. Because after he informed me that he had turned over this piece of ground and received $30 for it the stable was erected after that.
Q. That is what makes you think your father did not build it or pay for it? A. Yes, sir.
Q. Do you know what builder was engaged there to erect
78 the stable? A. No, I do not.
Q. You know nothing about what the stable cost, I suppose? A. No, sir.
Q. What kind of an affair is it today? A. The stable?
Q. Yes. A. It is a very ordinary stable—a frame building; what we might say one story, about ten or twelve feet high.
Q. Is it in very good order? A. Well, it looks more like a woodshed.
Q. A little rickety, too, is it not? A. Yes.
Q. Did your father sell any portion of lot 2 before he died to anybody? A. Yes; he sold all of lot 2, and at one time he owned all of lot 1.
Q. He sold all of lot 2? A. Yes, and he sold all of lot 1.
Q. Do you remember to whom he sold all of lot 2? A. Yes.
Q. To whom? A. He sold it to Lewis Goldberg, a brother to George Goldberg.
Q. Did you ever know of Rufus H. Darby ever owning any
79 part of lot 2? A. No, sir.
Q. You never heard of him in connection with it? A. No, sir.
Q. Did you ever have any talk with Goldberg about this strip of land on lot 2? A. No, sir.

Q. Did you know, of your own personal knowledge, whether Goldberg ever claimed to own that part of the lot? A. No, sir.

Q. You spoke awhile ago, in your testimony-in-chief, about Goldberg having occupied this small strip of land from the time your father turned the possession of it over to him up until the time he sold it. What did you mean by the expression "sold it;" do you mean Mr. Goldberg sold this part of lot 2? A. No; I don't know anything about that.

Q. You mean, when he sold the property, whatever belonged to him? A. Yes.

Q. You don't mean to say Goldberg had sold the strip or that you knew it? A. No, sir.

Q. Did your father build a house on lot 2—the front part of it? A. Yes.

Q. Do you remember who the builder was? A. I think it
80 was a man by the name of James Rangler who did the carpenter work.

Q. Do you remember who was the builder who erected the two buildings for George Goldberg? A. No, sir.

Q. How long has this stable been erected on this part of lot 2? A. In the neighborhood of ten years.

Q. Did you know either one of the complainants in this suit, Mary Shappirio or Jacob I. Shappirio? A. No; they are strangers to me.

Q. Do you know Goldberg and his wife today? A. I know Goldberg, and I know his wife when I see her. I am not personally acquainted with her.

Q. Are you here today as a witness under subpœna or a volunteer? A. I am under subpœna. I am no volunteer witness.

Q. Who paid Campbell for grading this portion of lot 2? A. He took it away for the dirt.

Q. Was the fence around it before it was graded? A. No, sir.

Q. After it was graded your father put a fence around it? A. Yes.

Q. Then, when your father turned it over to Goldberg, I understand, a year or two after that the stable was erected, or
81–85 this shed? A. Yes.

Q. And it has been there ever since? A. Yes.

Q. Did your father have any difficulty with his title to lot 2 that you know of? A. Not that I know of.

Q. You don't know from whom he bought it, I suppose? A. No, sir; I do not.

Q. Do you remember the time Goldberg bought the property around on 11th street? A. Yes; I remember the time, but I don't know exactly the year. I remember the time he bought it at public auction. At that time I think he was in business here on D street N. W.

Q. Do you think that Goldberg bought his property before or after your father bought lot 2? A. Well, I was under the impression that my father bought lot 2 before Mr. Goldberg bought, but if the record shows 1879, it would show he bought it after that.

Q. How long after Goldberg bought was it before he erected the stores? A. Six or seven years.

Q. How long after that was it that he got this strip from your father? A. Three or four years.

* * * * * * *

86 No. 2678.

Application for Permit for Repairs, Alterations, etc.

WASHINGTON, D. C., *June* 20, 1893.

To the inspector of buildings:

The undersigned applies for a permit to build to the following-described building:

87 Description of present building.

Where located: 1247 11th St. S. E. Name of owner: G. Goldberg.

Number of buildings to be erected: One. Name of architect: —— ——.

Area of present building: —. Name of mechanic: Jno. Lusby.

No. of stories: —. If occupied, how many families? —.

Style of roof: —.

How is the building occupied? Fuel shed.

What is the cost of the proposed improvements? $25.00.

Nature of the proposed alterations, &c. Give definite particulars. To build on the rear of the lot a frame fuel shed 6 x 15 x 10 high, tin roof. No construction for stable purposes.

For what will the building be used after alteration? A fuel shed.

After alteration, will the building conform in every respect with the requirements of the building law? —.

Signature: G. GOLDBERG.

Address: —.

The permit is as follows:

No. 2678.

Permit to Repair or Reconstruct Buildings.

DISTRICT OF COLUMBIA:

Office of the inspector of buildings.

WASHINGTON, *June* 20, 1893.

88–91 This is to certify that G. Goldberg has permission to build on the rear of lot to No. 1247 11th St. *N.* E. a frame fuel shed 6 x 15 x 10 high, tin roof, no construction for stable purposes, in accordance with application No. 2678 on file in this office, and subject to the provisions of the building regulations of the District.

The right is reserved to examine the buildings as often as may be necessary while in course of construction, and order any change in the construction that may be deemed requisite to secure sufficient strength, solidity, and safety from fire.

All flues must be enclosed with brick walls nine inches thick, or cased with terra-cotta pipes eight inches inside diameter, enclosed with brick-work not less than four and one-half inches thick.

By order of the Commissioners, D. C.

JNO. BRADY,
Cl'k — Inspector of Buildings.

* * * * * * *

92 JOHN F. DONOHOE, a witness on behalf of the complainants, having been first duly sworn, testified as follows:

By Mr. SIMMONS:

Q. State your name, age, residence, and occupation. A. John F. Donohue; I am sixty-three; I am temporarily at 419 East
93 Capitol street, and I am a real-estate broker.

Q. How long have you been engaged in the real-estate business? A. Sixteen years.

Q. What has been the principal location in which you have dealt in real estate? A. East Washington, exclusively.

Q. Are you familiar with square No. 977? A. I may have to look at it.

Q. I show you Hopkins' plat book and call your attention to square No. 977 on that plat. It is situated between 10th and 11th, M and N streets southeast. Are you familiar with that location? A. I am.

Q. I ask you to look at the little piece of land in the rear of lots 2 and 28, 30 by 20. A. Rear of lots 2 and 28?

Q. Yes; and square No. 977. A. Yes, sir; I have it.

Q. That is the north part of lot 2 (indicating). State what, in your opinion, that land is worth. A. Do you mean this small piece here (indicating)?

Q. Yes. A. I should say thirty dollars or forty dollars.

Q. Have you any reason for fixing that value upon it? A. I have.

Q. State what it is, please. A. I do not think that lot
94 would be of any use to anybody except the person who owns the front lot, the lot in front of it.

Q. Which lot? A. The frontage of this rear lot.

Q. It would be of no use to any person except the one owning the lot directly in front of it. Is that what you mean? A. That is what I mean.

Cross-examination.

By Mr. FIELDS:

Q. What do you think that piece of land would be worth to anybody who owned the lots in front of it? A. I do not know what it

would be worth; it would depend on how badly the man wanted it. I suppose it would be worth $75 or $100.

Q. Suppose without the strip there is a distance of eight or ten or twelve inches only from the wall of his building line to the line of that land, and without that strip he has no opening to the alley in the rear? A. If he had not any use for it, it would not be worth anything to him.

Q. Suppose he had use for it, such as I have mentioned—an opening to the alley in the rear? A. Seventy-five dollars or one hundred dollars.

Q. Do you think that would be the outside? A. How do you mean outside?

Q. The outside price? A. Yes, sir.

95 Q. (Referring to Exhibit E.) Please look at this photograph, wherein I point out to you the line of a fence immediately in the rear of No. 1247—— A. What street?

Q. Eleventh street southeast. A. Is that here (indicating on photograph)?

Q. No. This is the rear wall; here is the fence, coming along here, and this fence is on the line of this strip of ground (indicating on photograph). A. I cannot say that I understand you.

Mr. SIMMONS: Wait a moment. Before going into that, I wish to ask another question. (To the witness:) State whether or not you have based your value of this upon the position of the party owning any other land in that square—abutting property? A. Do I place my value on it because of the position of some non-resident?

Q. Assuming that you own no property in that square, what would be the value of that land to you? A. Not worth anything to me.

Q. Assuming that that piece of ground has been used as a back yard—— A. Which piece of ground?

Q. This part of lot 2 (indicating). A. I understand. But where are you showing it to me here (referring to photograph)?

Q. Look at the plat in Hopkins' book. A. I see it there.

96 Q. Assuming that that piece of lot 2 has been used as a back yard for years, ever since 1247 was constructed, how much damage would it be to that house to get it away from it and leave no outlet? A. Am I to understand that this small piece has been a part of this brick-house property on 11th street?

Q. Yes. A. And they are going to take it away from that house?

Q. Yes. A. It would — a large damage; I could not say how much.

By Mr. FIELDS:

Q. Do you mean by that to change your figures from $30 to $40, and say it is worth nothing at all? A. No, sir.

Q. What I ask you is this: In view of the fact that that strip of

land has a fence constructed around it, and it runs within a few inches of this wall, and this building has no outlet to the alley except from that strip of land, what is the value of that strip of land? A. Seventy-five dollars to one hundred dollars.

Q. Would that strip of land equal the value of the damages done in front? A. No, sir.

Q. What damage would be done in front? A. I could not say what damage it would do. It would injure the value of the property—of that house on 11th street—if that piece of lot were included with the brick-house property.

97 Q. Would it damage the property in front to a greater extent than the value of the strip itself? A. That I could not say. It is a hard matter to get at it.

Q. My question is this: You say that that strip is worth $30 or $40—— A. To any person who may want it.

Q. In connection with the front property? A. Yes, sir.

Q. Can it do any more damage by taking it away from the front property than its entire value? A. I should think so.

Q. Tell me what damage it would do in dollars and cents. A. That is for the man who owns the brick house to tell you.

Q. Do you judge the value of property by your opinion merely or by what it may bring in the open market? A. What it may bring in the open market; what it is worth today or has been for the last ten years.

Q. Suppose this property consists of 600 square feet of ground, with a frame shed or stable on it, and has sold within less than a year for $300 in cash, would that fact change yonr opinion in any way as to its value? A. No, sir; it was never worth that.

Q. Is property worth what it will bring or what you may think it is worth? A. What it will bring. That is not a fair price. It if were sold for that money it was under peculiar circum-

98 stances; it was not worth that.

Q. The proof in this case is that in the latter part of the year 1900 that property was sold by the owner—— A. This small piece of which you have been speaking?

Q. Yes—by the owner, Rufus H. Darby, for $300 in cash, and deeded to the purchaser. A. I would say that in that case that man expected to get $100 or $200 out of somebody else. He never gave that for it for himself.

Q. Do you know anything about the merits of this case? A. No, sir.

Q. Have you been advised about them by anybody? A. No, sir; Mr. Simmons asked me a week or two ago to come in here and give testimony.

Q. Which is the genuine test of the value of the property, your opinion or what it actually sells for? Q. What it sells for. I do not ask anybody to take my opinion.

Q. Have you examined this property personally? A. No, sir; but I know every foot of ground out there in East Washington without going there.

Q. Are you personally acquainted with this property? A. In the rear. I have often been down there on 10th street—often drive down there, and also on N street. It is a short cut across the river.

Q. Do you mean to tell me that you are familiar with the
99 rear of 1247 or 1245 11th street southeast? A. I am with the buildings.

Q. Did you ever see this piece of ground, or ever see the buildings? A. I saw it passing by, but never examined it.

Q. Can you see the rear from the front? A. From 10th street you can, I guess. I do not think there is any house at all on 10th street in that block.

Q. Have you any personal recollection of ever having seen the rear of these two buildings? A. Never in the world. Never had any reason to look at it.

Redirect examination.

By Mr. SIMMONS:

Q. What would be the value of lot 2 on N street? A. The ground itself?

Q. Yes. A. Twenty-five cents a foot. I do not know that it would bring that, but I think it is worth twenty-five cents a foot. I think maybe it did sell for fifty cents during the "boom" here, but the people who bought it have not much money left—I mean in that neighborhood land sold for fifty cents.

Q. What, in your opinion, would this small lot sell for, if it were put up at auction, to persons not having any property in the square? A. Unless somebody wanted that lot there would be no one at the sale to buy it.

100 Q. You say somebody. What do you mean by that—somebody who was interested? A. Buying it for a certain purpose. Nobody would go to the sale of that piece of land.

Q. What use could be made of that piece of land? A. I suppose a stable could be put on that if anybody was living close there and wanted one.

Q. Suppose the building regulations prohibited a stable within twenty feet of a building? A. I do not suppose it would be worth anything to a man if he could not make use of it for a stable, unless the man on 11th street wanted to buy it to help his lot out. He is the man who ought to own it.

Q. State whether or not, in your opinion, that lot is more valuable to the owner of part of lot 28, in the rear of premises 1247, than to any other person. A. You mean to say, is it worth more to the 11th street property than it is to this here (indicating on plat)?

Q. Yes, as being an addition to the yard? A. I suppose the 11th Street lot has a brick house on it; this is a frame, not worth more than one-third of that.

Q. Assuming that this back yard of premises 1247, on 11th street, lot 28, came within one foot of that piece of lot, what have you to say as to whether it would be worth more to the owner of

lot 28 than to any other person? A. The way this plat shows it, it is worth more to this man than to this one here (indicating
101 on plat). This man has a pretty good lot.

Q. This man, the owner of lot 2, has a pretty good lot? A. Yes, sir. The rear of the brick house on 11th street does not seem to have any lot.

Recross-examination.

By Mr. FIELDS:

Q. Suppose lot 2 has been partit-ed into two equal halves, is not that strip just as valuable to the owner of lot 2 as it would be to anybody else? A. No, sir.

Q. How is he to get at it? A. Any way he may want to. The property there is not worth more than one-third of what it is on 11th street.

Q. When you spoke of the property being worth twenty-five cents a foot—— A. On N street.

Q. Did you refer to improved or unimproved property? A. Unimproved. We do not consider a frame house worth anything.

Q. If a frame house cost $10,000 you consider it worth nothing? A. That is the way we value it; always go for nothing—frame house. When we put the value on the land, that includes the frame house, or, in other words, we do not consider a frame house of any value.

Q. Do you know of any sales that have taken place within
102 this square during the last year? A. No, sir; but I do know right the opposite. There was a sale occurred in this square, yes, sir, within the last three months. I think it was within eight or ten doors of this property, up toward M street. The records will show it.

Q. What price did that property bring? A. I do not remember. It was an auction sale. It was east of this—1240 or 1242. It was a good frame house, renting for ten dollars a month. It sold for $1,100. Mr. Radcliff sold it, I think. It is part of the Carrico estate; you can get it that way.

Q. How much per square foot was that? A. I do not know; just as it was, it sold at $1,100.

Q. How much frontage had it? A. I think eighteen feet by 170 feet deep.

—. You would have to look at the plat to ascertain that? A. It has 3,635 feet of ground on it.

By Mr. SIMMONS:

Q. Speaking of frame houses, you say in making a sale you do not take into consideration in making your valuation the frame house that may be on the land? A. Not to speak of; though it may have cost $1,000, we do not consider it worth over $250 in the sale. In nine times out of ten the frame house is pulled down and a brick house build.

Q. Speaking of vacant land, you say you sell the land per
103 square foot, and that includes the improvements? A. Yes, sir; or sold so much in a lump. If that land were to be sold at public auction and a man should say so much a foot, that would include the house.

Q. *That is what you mean by not taking the house into consideration?* A. Yes, sir.

Q. You do not mean to say that the house has no value? A. There is not much value put on an old frame house. Of course, it is worth something. But you are never done repairing an old frame house, and we consider it of very little value. You, of course, know that they are doing away with them as fast as possible.

By Mr. FIELDS:

Q. Nos. 1245 and 1247 you say you are personally familiar with? A. Yes, sir.

Q. Tell me what, in your judgment, is the value of those two pieces of property. A. What frontage have they?

Q. Thirty-four feet. A. How many rooms?

Q. I cannot tell you.

Mr. SIMMONS: I object to that question on the ground that it is not proper cross-examination.

104 (By Mr. FIELDS:)

Q. You have seen the property and I have not. Give me your judgment of what is the value of those two pieces of property from what knowledge you have of them.

Mr. SIMMONS: I object to that question on the ground that it is impossible for the witness to tell the value of the property without first having examined it.

The WITNESS: Are they six-room modern houses, or what? Can you tell what kind of houses they are?

Mr. FIELDS: I understood you to say that you were personally familiar with them. I am not.

The WITNESS: Yes, sir; but I have never been inside of them.

(By Mr. FIELDS:)

Q. Will you give the value of those two pieces of property from the knowledge that you now have? A. Thirty-three hundred feet of ground in the two houses. Is that right?

Q. I think that is right. A. I consider them worth about $4,000, without going and looking at them.

By Mr. SIMMONS:

Q. For the two? A. Yes, sir.

Q. State the name of the book you have been looking at while you were testifying. A. Hopkins' Plat Book of Washington.

Q. How long has that plat book been recognized as an
105 accurate description of the property in this city? A. About twelve or fourteen years.

Q. State whether or not it has been used by real-estate brokers in making sales. A. Yes, sir; by every broker in business, if he can get one of them.

By Mr. FIELDS:

Q. This plat book has been produced and shown to you by Mr. Simmons in his own office? A. Yes, sir.

Q. And you observe on his table the balance of them, I believe? A. Yes, sir; I do now. I did not before.

Q. Please look at this strip of ground in the rear of 1247 11th street and state whether or not the plat book shows that this strip is separate and distinct from 1247. A. It is on that plat book.

By Mr. SIMMONS:

Q. Look at that plat and state why the lines appear to separate this strip of property from the other; in other words, state whether or not the original lots on that plat are heavily lined. A. Except for the ink.

Q. State whether or not the original lines of the square are heavily lined. A. Yes, sir; all the original lots are. That (indicating on the plat) looks like ink; but I do not know that it is. I do not believe it is, come to look at it.

106 Q. You notice that all of lot 1 is one heavy line, while it is subdivided into several parts? A. Yes, sir.

Q. You notice also that lot 2 is one heavy line, although subdivided? A. Yes, sir.

Q. And also lot 28, in that square? A. Yes, sir; I see what you have reference to now.

Mr. SIMMONS: I concede that the plat there shows the piece of ground in the rear of 1247 11th street southeast is separate from lot 28. But while the plat shows the lines separating the lots, it also shows the original lots by heavy lines, and that strip was a part of original lot 28.

By Mr. FIELDS:

Q. Does not that plat show that that strip of ground in the rear of 1247 is a separate and distinct piece of property from the lot occupied by house 1247? A. Assume it shows that it belongs to lot 2.

Q. But does it not show that it is separate and apart and no part or parcel of lot 28? A. Yes, sir; shows that it has nothing to do with it.

By Mr. SIMMONS:

Q. State whether or not that is the case with all the lots. A. The same case—all the lines heavy constituting the original lots.

Q. And whether or not they are divided into parts? A. Divided in parts. But they are finer lines—the same as the
107 adjoining lots—narrow lines. All the original lots have heavy lines.

Q. And where there has been a subdivision they are fine lines? A. Yes, sir; I see the dark lines. I thought it was marked with ink, but I see it is not. It is original lot 2.

* * * * * * *

(NOTE.—It is stipulated and agreed by and between the solicitors for the respective parties that the two papers marked "Chain of title A" and "Chain of title B" may be offered in evidence as showing a conveyance of lot 2, in square 977, and part of lot 28, in square 977, in lieu of the original deeds.)

LEO SIMMONS, a witness on behalf of the complainants, having been first duly sworn, testified as follows:

The WITNESS: I am the solicitor for the complainants in this case. I have examined the record, and I find that the paper marked "Chain of title A," is a transcript of the records showing the conveyances, as far as I could discover, of lot 2, in square 977.

(NOTE.—It is stipulated and agreed by and between the solicitors for the respective parties that John G. Adams had a good
108–110 title to lot 2, and conveyed the same to Samuel T. G. Morsell December 8, 1853.)

The WITNESS: The paper marked "Chain of title B" contains a transcript of the records showing the deeds to the south thirty-two feet of lot 28, square 977, until it reaches William Clark, and from that date on the deeds include the south twenty-four feet of lot 28, in square 977.

(NOTE.—It is stipulated and agreed by and between solicitors for the respective parties that William Ashdon had a good title to said part of lot 28 on July 20, 1854, when he conveyed it to William Clark.)

The WITNESS: I have also examined the records at the tax office, and I find that the north part of lot 2, square 977, the property in dispute, was assessed in the name of John M. Gates from 1886 to 1890, and that taxes were paid in his name.

Mr. FIELDS: No cross-examination.

* * * * * * *

111 FRED G. AUKAM, a witness on behalf of the complainants, having been first duly sworn, testified as follows:

By Mr. SIMMONS:

Q. State your name, age, residence, and occupation. A. My name is Fred G. Aukam; I am 66; I reside at 2404 14th street northwest, and I am a real-estate broker.

Q. How long have you been in the real-estate business? A. I have been in that business thirteen years.

Q. Are you acquainted with the location of square 977, in East Washington? A. I am.

Q. Have you made an examination of premises 1247 11th street southeast? A. I have.

Q. I point out to you square 977 in Hopkins' Plat Book of Squares in the City of Washington. I want you to look at the rear of 1247 11th street southeast, and tell me what that little piece of land there is worth, in your opinion, it being a part of lot 2, in that square. A. It will be perfectly impossible to state from my judgment that there is much of any value to it to any one to purchase it, because of the situation.

Q. State whether or not you have examined the premises there, 1247 11th street southeast, and what, in your opinion, would be the damage done by cutting that piece of land away from those
112 premises, 1247. A. That would be, certainly, very great.

Q. About how much would you estimate? A. Under the present condition of things I would consider that it might be a thousand dollars or more. It would depend upon the extent those people need it; certainly they have no yard at all, and it is a store. Those are the only parties I could see to whom it would be of any value.

Q. To what parties do you refer? A. The owner of the front lot, the front building.

Cross-examination.

By Mr. FIELDS:

Q. Is not that strip *in* land in the rear of two lots, Nos. 28 and 2? A. As to that I do not know. You could not tell that very well from the location. It is all closed up in the rear; so that I could not positively testify to that. It looks a little bit hearsay.

Q. Look at the plat and see if that little strip of ground is not in the rear of lot 2, square 977? A. (After examining plat.) It is a part of lot 2.

Q. Is it not of as great value to the owner of lot 2, to which it belongs, as to the owner of the 11th Street premises? A. It belongs here (indicating).

Q. Does it not show that it is a part of lot 2 and not of lot 28? A. It does.

113 Q. Why is not that of as great value to the owner of part of lot 2 as to the owner of the 11th Street property? A. I do not know, except that the situation there (indicating lot 2) is not nearly so critical as this one here (indicating lot 28).

By Mr. SIMMONS:

Q. To which one do you refer when you speak of its being more critical? A. Part of lot 28. The other one has an abundance of yard room; these people (referring to lot 28) have nothing.

Q. The one you refer to as having an abundance of room is lot 2? A. Yes.

Q. And you refer to lot 28 as having nothing? A. Yes; that is all I see here.

By Mr. FIELDS:

Q. Now, this half (indicating the right-hand half of lot 2) has no outlet at all, you observe? A. Yes, sir.

Q. While the left-hand half of lot 2 must have its outlet, if any, over this strip of ground to get into this alley? A. Yes. I cannot see why the same thing does not apply there; they cannot have an outlet there (referring to lot 28, 1247 11th street).

Q. Now, you will observe that the left-hand half of lot 2 is
114 improved, as shown here (exhibiting photograph), by a frame building? A. Yes, sir.

Q. So that, so far as outlet is concerned, the south part of lot 28 and the left-hand part of lot 2 stand just alike? A. Yes. As I understand it, neither one of them has any outlet.

Q. Without that strip of ground? A. Without that strip of ground. But you did not understand me aright. When I said there was abundance of ground, I meant to say from this line to the building (referring to lot 2); where there is no ground left to the other house (referring to premises 1247 11th street).

Q. I understand you to mean by that that there is an abundance of back yard? A. Yes; while it is a direct injury to this building here (indicating premises 1247), as it is all closed up there with a fence. Those people there have none.

By Mr. SIMMONS:

Q. You mean they have no yard at all? A. None.

By Mr. FIELDS:

Q. My question was, specifically as stated a moment ago, the left-hand half of lot 2 and the south half of lot 28 stand upon exactly the same footing as regard outlet? A. That is so.

115 Q. You say that in your judgment this strip of ground has, in itself, no value at all? A. Yes, sir.

Q. As an outlet either to part of lot 2 or the south part of lot 28, has it a value? A. Undoubtedly.

Q. Would it prove as to those two pieces of ground what might be called the key to an alley entrance? A. Yes; it might be termed so.

Q. In your experience, have you ever found a very small strip of ground to be of very great value to adjoining property in the way of affording an outlet to either an alley or a street? A. It is generally open to a compromise.

Q. That has happened quite often in your experience? A. Often. But there is generally some compromise made in getting an outlet.

Q. Do you judge the value of property by what it sells for in the open market or by your opinion? A. By what it could be sold for—not opinion—my experience. When I offer property in the market I ascertain what is wanted and what is not wanted; to what extent it is wanted and the price.

Q. Have you ever known instances where persons bought property with an idea of buying a key to certain other property? A. Oh, yes.

Q. Have you known that key to be paid for at a rate in
116 excess of the value of the ground? A. Yes.

Q. Now, this particular strip, which is twenty by thirty and to which your attention has been called, was sold in the latter part of last year by the owner for three hundred dollars in cash. In your judgment, would that be a fair test of its value?

Mr. SIMMONS: I object to any such question as that on the ground that there has been no foundation laid for it.

The WITNESS: That would not be a proper question to answer.

(By Mr. FIELDS:)

Q. If that strip of ground was sold in the latter part of last year by the owner, after considerable negotiation, for $300 cash, would that influence your opinion as to its value? A. No, sir; it would not influence me at all.

Q. Now, the proof in this case heretofore offered is to the effect that the owner of this strip of ground sold it in the latter part of last year for $300 in cash. Does that fact in any manner influence your judgment as to the value of that strip of ground at that time? A. Oh, no.

Q. You are familiar, I believe, with the property 1245 and 1247 11th street southeast? A. Yes, somewhat.

Q. Have you ever been inside of those properties? A. 1247?

Q. 1247 and 1245. A. I went through 1245.

117 Q. You are familiar with the property as to its external appearance? A. Yes.

Q. What is your opinion as to the value of those two pieces of property?

Mr. SIMMONS: I object to that question on the ground that it is not proper cross-examination. That was not gone into in the examination-in-chief of this witness.

The WITNESS: I could not give you a value on those two pieces of property because I have not examined them for that purpose; I only examined the lot.

By Mr. FIELDS:

Q. Can you give us a value on them from the examination you have made? A. No, sir; it would not be one that I would consider fair and just.

Q. If this strip of property in and by itself be worth nothing, as you have testified, in what manner can it cause a damage of a thousand dollars or more to the adjoining property? A. Because of its adjacent position—one that is so damaging.

Q. Its adjacent position? A. Its close proximity to this building.

Q. Is not that a fact which causes it to have a peculiar value? A.

I cannot say as to that, because that would be a personal
118 choice. It would be absolutely a question of choice. But there is a lot that cannot be made use of either as a stable or any other thing that I know of from which you could get an income if a building were put on it, or the expense of a building. I cannot see any way, shape, or form by which it can be done. It cannot be made use of for a stable.

Q. As a key to part of lot 28 and part of lot 2, has not that strip of land a peculiar value? A. There comes in a personal value.

Q. For which, perhaps, there is no good test? A. No; there is this much: It looks like the other property, 1247, would be considered more with fairness than the one on N street, on the west lot of No. 2.

By Mr. SIMMONS:

Q. Do you mean to say that it was of more value to 1247 than to the N Street property? A. I mean to say that it would be more damaging to 1247 not to be attached than to the other.

By Mr. FIELDS:

Q. That is because 1247 has no back yard and the other has? A. Yes; that is a critical situation there.

Q. And neither of them has an outlet to the alley? A. That a person can get along with. There is not very much trouble about that. Because it is not accessible to the alley, is not very much for transacting business; but the grounds are very rough.

119 Q. I suppose you are entirely familiar in your line of business with the Hopkins Plat Book? A. Yes.

Q. Look at that plat again and state whether this little strip of ground, according to the plat, has any connection whatever with the rear of premises 1247.

Mr. SIMMONS: What do you want to ask that for when I have conceded that it has not? I concede that according to the Hopkins Plat Book, from which the witness has been testifying, and according to the lines of the original lots, it is not shown that lots 2 and 28 are connected, but are separate plats of land. But that is the case with the remaining lots in that square.

The WITNESS: That is the way it is shown there (indicating plat).

By Mr. FIELDS:

Q. This Hopkins Plat Book has been in common use among real-estate dealers for some years, has it not? A. Oh, yes, indeed.

Q. About how long? A. This last one, I think—the new ones came out about seven or eight years ago.

Q. Have not these plat books been in constant use by the various title companies in this city? A. Oh, yes.

Mr. SIMMONS: I object to that question and answer on the ground
120 that the testimony is immaterial and improper and not proper cross-examination of this witness.

Redirect examination.

By Mr. SIMMONS:

Q. You have never seen any of those plat books in the possession of any one of the title companies, have you? A. Yes, sir.

Q. Which one? A. The title company here—the Columbia Title Company—and in Ashford's.

Q. In your testimony here you have stated that this small piece of land is of more value to premises 1247 11th street, or the south part of lot 28 mentioned, than it is to the premises on N street, part of lot 2. State whether or not you base that upon the fact that the premises 1247 11th street would have no yard left if that were taken away. A. That is it; no light if anything were put up there.

FRED G. AUKAM,
By J. A. SWEENEY, *Examiner.*

(NOTE.—It is agreed by and between the solicitors for the respective parties that the evidence on behalf of the complainants is closed, except as to proof of signature of defendant George Goldberg to the application for the permit produced by the witness Kern,
120½ and that in case the said Goldberg fail to take the witness stand, and in case he deny the signature to be his, should he take the stand, the complainants shall have the right to call such witnesses as they may desire by whom to prove such signature.)

J. A. SWEENEY,
Examiner in Chancery.

121 EXHIBIT "A."

WASHINGTON, D. C., *May* 11, 1900.

I hereby ordersise L. Richold to sell my broberty No. 1245 and 1247—11th St. S. E., for the amount of six thousand doll. $6,000 square 977, part of lott 28: 34 fütt front by 80, to alley, with improvements, a comisen of three per cent. I promise to pay on the amount of sale.

G. GOLDBERG.
M. D. GOLDBERG.

EXHIBIT "B."

WASHINGTON, D. C., *Aug.* 1*st.* 1894.

Received of A. Nalley thirty dollars for house rent in advance of house No. 1247 11th St. S. E.

Received payment,

G. GOLDBERG.

EXHIBIT "C."

WASHINGTON, D. C., *November* 1*st*, 1895.

Received of A. Nalley twenty-five /100 dollars for house rent in advance of house No. 1247 11th St. S. E.

Received payment,

G. GOLDBERG.

122 "EXHIBIT D."

WASHINGTON, D. C., *June* 1, 1896.

Received of A. Nalley twenty-five /100 dollars for house rent in advance of house *rent* No. 1247 11th St. S. E.

Received payment,

G. GOLDBERG.

"EXHIBIT I."

(2 I. R. stamps.)

This deed, made this fifth day of June, A. D. 1900, witnesseth, that George Goldberg and Minnie D. Goldberg his wife, of the District of Columbia, parties hereto of the first part, for and in consideration of ten dollars in current money of the United States, to them paid by Mary Shappirio, of said District of Columbia, party hereto of the second part, receipt of which, at the delivery hereof, is hereby acknowledged, have, bargained, and sold granted, enfeoffed and conveyed, and do hereby bargain and sell, grant, enfeoff and convey unto and to the use of the said Mary Shappirio, her heirs and assigns the following-described land and premises, with the improvements easements and appurtenances thereunto belonging, situate and lying in the city of Washington in said District of Columbia, namely: All that part of original lot numbered twenty-eight (28) in square numbered nine hundred and seventy-seven (977), con-

123 tained within the following metes and bounds namely:

Beginning for the same at the southeast corner of said lot and running thence north on Eleventh street thirty-four (34) feet; thence west eighty (80) feet, eight (8) inches to an alley; thence south on said alley fourteen (14) feet; thence east eighteen (18) feet; thence south twenty (20) feet, and thence east sixty-two (62) feet, eight (8) inches, to the place of beginning.

To have and to hold the said land and premises, with the improvements, easements and appurtenances unto and to the use of the said Mary Shappirio, her heirs and assigns forever.

And the said George Goldberg for himself and his heirs, doth hereby covenant with the said party hereto of the second part, her heirs and assigns, to forever warrant and defend the title to said granted premises unto the said party hereto of the second part, her heirs and assigns, from and against all persons claiming the same, or any part thereof, by, through or under the said parties hereto of the first part, and, at the cost of the person requesting the same, to execute and deliver any other or further deed or deeds, deemed by legal counsel necessary to more fully assure the title to said granted premises unto the said party hereto of the second part, her heirs and assigns.

In testimony whereof, the said parties hereto of the first part have

hereunto set their hands and seals the day and year first hereinabove written.

GEORGE GOLDBERG. [SEAL.]
MINNIE D. GOLDBERG. [SEAL.]

Signed, sealed and delivered in presence of—
WM. D. HOOVER.

124 DISTRICT OF COLUMBIA, *To wit:*

I, William D. Hoover, a notary public in and for the District aforesaid, do hereby certify that George Goldberg and Minnie D. Goldberg, his wife, the grantors in and who are personally well known to me as the persons who executed the aforegoing and annexed deed dated June 5th, A. D. 1900, personally appeared before me, in the District aforesaid, and acknowledged said deed to be their act and deed.

And the said Minnie D. Goldberg, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her by me, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this fifth day of June, A. D. 1900.

[SEAL.] WM. D. HOOVER,
Notary Public.

Endorsed.

Received for record June 5, A. D. 1900, at 3.27 p. m., and recorded in Liber No. 2517, folio 22, of the land records of the District of Columbia.

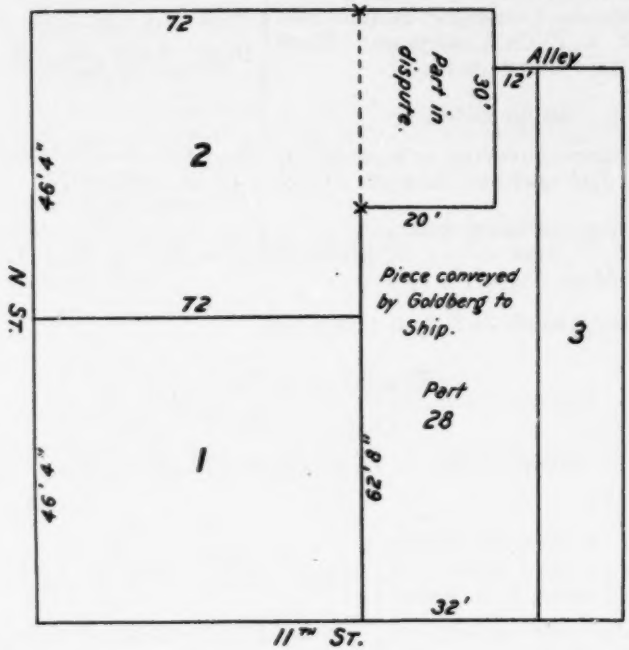
Examined by—

H. O. CHEATHAM, *Recorder.*

125 EXHIBIT L. S. No. 1.

Chain of Title.

Chain of title to the south 32 feet of lot 28th, square 977.



William Ashdon to William Clark. } July 20th, 1854. Deed. J. A. S. 85, folio 58.

Conveys south part of lot 28th, fronting 32 feet on 11th street.

(NOTE.)—See No. 2 of chain to lot 2 for conveyance to Clark of part of lot 2, now in dispute.

Corporation of Washington to T. Edward Clark. } May 5th, 1870. Tax deed. Liber 622, fol. 272.

Conveys the south 34 feet of lot 28.

(NOTE.)—William Clark died in 1855.

126 T. Edward Clark to Samuel Cross *et al.* } Deed of assignment. Liber 866, folio 237. Aug. 4, 1877.

In trust to sell and pay creditors. Same as property as last-above described.

R. Ross Perry, E. K. Goldsborough, trustees and receivers; Samuel Cross and J. T. Cull, assignees; Thos. Edward Clarke, *et al.* to George Goldberg. } Deed. Feb. 6th, 1879. Liber 904, folio 413. 1879.

Grantors conveying as representing all of title to which William Clark died seized to the south 34 feet of lot 28, square 977.

George Goldberg *et ux.* to Mary Shappirio. } Deed. Liber —, fol. —. May, 1900.

Conveys south 34 feet on 11th street.

127 EXHIBIT L. S. No. 2.

Chain of Title.

Chain of title to lot 2, square 977, from 1854.

* * * * * * *

1. John G. Adams to Samuel T. G. Morsell. } Deed. Dec. 8, 1853. Liber J. A. S. 70, fol. 32.

Conveys parts of lot two (2), fronting 46 feet on N street by depth of 72 feet. Beginning on N street, 46 feet 4 inches west of southeast corner of square, thence north 72 feet, thence west 46 feet 4 inches, thence south 72 feet, thence east 46 feet 4 inches to beginning.

2. John G. Adams to William Clark. } Deed. Feb. 17, 1853. J. A. S. 76, folio 252.

Conveys part of lot 2, north 20 feet, described as follows: Beginning at northwest corner of lot, thence east 30 feet, thence south 20 feet, thence west 30 feet, thence north 20 feet to the beginning.

3. Samuel T. G. Morsell to William H. Clagett and William M. Shuster. } Deed. Feb. 5, 1856. J. A. S. 111/36.

Conveys all of lot two (2), square 977.

128 4. William M. Shuster to William H. Clagett. } Deed. July 5th, 1864. Partition N. C. T. 39, folio 389.

Conveys the western part of lot two (2), fronting 23 feet 2 inches on N street, running back same width to northern or rear line of said lot.

5. William H. Clagett to William M. Shuster. } Deed. July 5, 1864. Partition N. C. T. 39, folio 393.

Conveys the eastern part of lot two (2), fronting 23 feet 2 inches on N street, and running back that width to northern rear line of lot.

6. William H. Clagett and William M. Shuster to John N. Gates. } Deed. Sept. 28th, 1885. 1885. Liber 1144, folio 369.

Conveys all of lot two (2).

7. John M. Gates to Howard Clagett. } Trust. Sept. 28, 1885. Liber 1140, folio 297.

Conveys all of lot two (2) to secure William H. Clagett and William M. Shuster $294.00; released.

129 8. John M. Gates to Henry H. Bergmann *et al.*, tr., C. G. Liderser. } Trust. Sept. 8th, 1890. Liber 1510, folio 483.

All of lot two (2) released, Liber 2067, fol. 55.

9. John M. Gates to Louis Goldberg. } Deed. Sept. 3, 1895. Liber 2045, folio 251.

Conveys lot- one (1) and two (2) described, beginning at southeast corner of square and of lot one (1), thence west on N street 92 feet 8 inches; thence north 72 feet; thence east 46 feet 4 inches; thence south 41 feet; thence east 46 feet 4 inches to 11th street; thence north to the beginning.

* * * * * * *

10. Bergman *et al.*, tr., to Louis Goldberg. } Release. Oct. 1st, 1895. Liber 2067, folio 55.

130 & 131 Release of trust in Liber 1510, folio 483, part lot- one (1) and two (2), as described in deed from John N. Gates

to Louis Goldberg, being 46 feet 4 inches on N street, 72 feet deed of lot two (2).

11. R. Ross Perry *et al.* to Rufus H. Darby. } Deed. Liber 1538, folio 327. October 28th, 1890.

Conveys as representing all of the title of which William Clark died seized to the north 20 feet of lot two (2), square 977, described by metes and bounds, beginning at northwest corner of lot two (2), thence east 30 feet; thence south 20 feet; thence west 30 feet; thence north to the beginning; part in dispute and other property.

12. Rufus H. Darby to George Goldberg. } Deed. Liber. September 28th, 1900.

Conveys the property as last described, now in undispute.

* * * * * * *

132 *Cross-examination of* 4 *Witnesses for Complainants.*

Filed November 13, 1901.

WEDNESDAY, *September 4th*, 1901—2 o'clock p. m.

Met pursuant to agreement of counsel.

Present: Mr. Simmons, on behalf of complainants, and Mr. Fields and Mr. Strasberger, on behalf of defendants.

It is stipulated and agreed between counsel that the application for a building permit heretofore offered in evidence was signed by the defendant George Goldberg, and that the word "owner" following his name thereon is in print.

It is agreed that the witnesses produced today were produced for the purpose of cross-examination on the part of the defendant, they having been subpœnaed by the defendants, not because the complainants declined to do so, but it was doubtful whether they would attend promptly without being subpœnaed.

It is further agreed between counsel for the parties respectively that the complainant Jacob I. Shappirio is a citizen of the United States and had been long prior to the filing of this suit and prior to the time the title was taken by the complainant Mary Shappirio.

Mr. FIELDS: I object to the following as being hearsay,
133 viz., to the third answer on page 4 of the record in the testimony of the complainant Mary Shappirio, beginning with the words "Mr. Shappirio said" and ending with the words "and one alley."

Whereupon RUFUS H. DARBY was produced for cross-examination.

Mr. FIELDS: On page 23 of the testimony of Rufus H. Darby I object to the following questions as leading: First, "It was a part

of lot 2, in square 977;" second, "Part of lot 2, square 977." On page 24 of Mr. Darby's testimony I also object to the following questions as leading: First, "The front part of the lot;" second, "Was it more than five years;" third, "Was it more than three years?" On page 25 of Mr. Darby's testimony I also object to the following questions as leading: First, "Could you state whether it was more than one year?" second, "Did he pay you in cash?" third, "You deducted back taxes?" fourth, "Did he state to you at the time he bought the lot that he had possession of it?" fifth, "He didn't mention her name before that?" sixth, "Did he tell you to make the deed to Mrs. Goldberg?" On page 26 of Mr. Darby's testimony I also object to the following questions as leading: First, "State whether or not you considered that a fair
134 price for the piece of ground, or whether it was a high price for it;" second, "State what he said, if anything, to indicate that it was necessary for him to have the piece of ground."

Mr. SIMMONS: Counsel for the complainants state that the objections to the questions as being leading comes too late, and should have been made at the time they were asked.

By Mr. FIELDS:

Q. Mr. Darby, you have testified that you received $300 for this strip of property from Goldberg? A. The price is $300.

Q. Did you receive $300 less the taxes then due? A. I don't remember exactly what the expenses were, but the price of the lot was $300, and it was to give a clear title.

Q. You have testified that this was a high price for this strip of ground; could Goldberg have bought it from you for any less? A. If I had known he would have bought it before that I would have asked him more. I was told by my father-in-law before he bought the property that I was a fool, that I could have gotten $500 as easily as $300.

Q. Would you have taken, at the time you sold it, any less than $300 for it? A. No, sir; I had several offers for less from Mr.
135 Goldberg, but I refused them.

Redirect examination.

By Mr. SIMMONS:

Q. You never had an offer from anybody else, did you? A. No, sir; not to my recollection.

Q. You say if you had known you could have gotten $500 as easily as $300? A. I consulted with Mr. Clark, my father-in-law, about this $300 and he did not agree with me that I should take $300. He told me he was satisfied Mr. Goldberg would buy that property, and I told him I thought $300 was an exorbitant price for it and I better take the $300 because I might not get any more. And I considered it, and I accepted Mr. Goldberg's proposition to take $300.

Q. And you thought $300 an exorbitant price?

Mr. FIELDS: I object to that as leading.

A. I said I thought it was an exorbitant price, and Mr. Clark insisted I could get more for it, and it was a small piece of ground and very useful, &c., but I thought by getting $300 I was getting a great deal more than the property was worth, ordinarily considered.

Recross-examination.

By Mr. FIELDS:

Q. Was this piece of ground ever offered for sale to any-
136 body else? A. Not that I know of.

Q. Do you recollect where your father-in-law said it was valuable? A. Yes; he had talked to me about it several times to buy that little piece of ground.

Q. And why was it considered as peculiarly valuable? A. Because it was back of that lot, and a small piece.

Q. A sort of a key to the whole? A. A key to the whole or necessary to belong to the other property. I met him afterwards at Gaithersburg and he said, "I told you so; I always told you that. You could have gotten $500 as easily as $300."

By Mr. SIMMONS:

Q. When did he say that to you? A. Today.

Q. When you spoke of the piece of property being small and a part of the other property, what did you mean; part of the property on 11th street, or part of any other property? A. Part of the property down there; the 11th Street property.

By Mr. FIELDS:

Q. Just there, this property, of course, is part of lot 2? A. In the rear?

Q. In the rear. A. I am not familiar with the lot. I
137 have got fifteen or twenty pieces of ground down there and never paid much attention to it. That is the only piece I sold out of the whole lot.

RUFUS H. DARBY,
By JOHN A. SWEENEY,
Examiner in Chancery.

138 Whereupon ALFRED NALLEY was produced for cross-examination.

Mr. FIELDS: On page 30 of the testimony of Mr. Nalley, I object to the following questions as leading——

Mr. SIMMONS: Counsel for the complainants states here now that the objections interposed come too late, and insists that counsel for the defendants has no right to make them at this time.

Mr. FIELDS: I have never before had an opportunity to make them. First, "Now, Mr. Nalley, state as near as you can what conversation you and Mr. Goldberg had in relation to that place when

you first went there, as to stables, &c.;" second, "Did he build it after you moved in or before?;" third, "And that was just about the time you first moved in?;" fourth, "And according to that receipt it would be in August, 1894." And on page 31 of Mr. Nalley's testimony I also object to the following questions as leading: First, "You may state whether or not it was a year, two years, or more;" second, "You occupied the property the entire time these receipts cover?" And on page 32 of Mr. Nalley's testimony I also object to the following questions as leading: First, "Do you know that he bought it from Mr. Gates?" second, "The entire time after you left it." And on page 33 of Mr. Nalley's testimony I
139 also object to the following questions as leading: First, "That is the place?" second, "And that is the stable that was built—;" third, "For you."

By Mr. FIELDS:

Q. Mr. Nalley, you have testified that Mr. Goldberg got Selby to build this stable? A. Yes.

Q. How do you know that? A. Because I was there when he told me to send Selby over to him.

Q. Who told you to send Selby over? A. Mr. Goldberg.

Q. Who paid Selby? A. That I don't know. He engaged him to build it.

Q. Were you present when the arrangement between Goldberg and Selby was made? A. No, sir.

Q. How long did it take Selby to build it? A. He was about four or five days doing it.

Q. Do you know where he got the lumber? A. I do not.

Q. Who put on the tin roof? A. I don't remember whether Ferguson put it on, or Frye. I could not tell exactly who put it on.

Q. Is it not a fact Selby was only two days building that stable? A. He was longer than that.

140 Q. Did this stable consist of anything more than building on top of the fence—that is, around the strip of fence, and putting a roof on it? A. It had to go higher than the fence.

Q. Was it constructed on top of the fence, up? A. Right on top of the fence, up.

Q. What was put on there by Selby, as I understand you, was constructed right on top of the fence that was already around the lot? A. Yes; he commenced over the fence that was around the lot, and built up over that.

Q. The roof is higher to the south than on the north, is it not? A. I think it is; I believe it is.

Q. So that it would slant from the south to the north? A. It has a slight slant. I think it has.

Q. It slants from the south down north? A. Yes.

Q. You say you don't know who paid Selby? A. I don't know, but I judge Mr. Goldberg did. I know I did not.

Q. Do you know how much Selby got? A. I don't know.

Q. Were you living on the property while the stable was being constructed? A. I was moving in while it was going on, sir.

141 Q. Who put the door in that stable which leads into the yard? A. That I can't tell you. I don't remember.

Q. Did you put it there? A. No.

Q. Did you know Mr. Gates, the old man? A. I did.

Q. Did you ever see him around there? A. He used to come up to the store there after I kept there, and I used to go down to his place.

Q. Did you ever see him about the stable? A. No, sir.

Q. Was he there while Selby was working there? A. I don't remember whether he was or not.

Q. Why did you say that Goldberg employed Selby to do that work? A. Why do I say it? I don't know of any one else that had any right to employ him. I know I did not.

Q. Do you know whether Mr. Gates did or not? A. No, sir; I do not.

Q. Can you state of your own personal knowledge who did employ and pay Selby to do that work? A. That I could not tell you.

Q. I suppose you were not greatly interested in that branch of the matter? A. Not much, so I got the stable built.

142 Q. Is not all the ground in the rear of premises 1245 and 1247 11th street southeast, out to 10th street southeast, entirely vacant ground?

Mr. SIMMONS: I object to that on the ground that nothing of the kind was gone into in the examination-in-chief.

A. Yes, back of 10th to that alley.

Q. There is no alley in the rear of these premises actually laid out or improved, is there? A. No, sir; it is all unimproved.

Mr. FIELDS: On page 32 of Mr. Nalley's testimony I object to the following answer as hearsay: "Mr. Gates told me that he had sold him the privilege of it, that was all."

Q. Did you not know, Mr. Nalley, from August, 1894, that the stable and lot in the rear of 1247 11th street southeast did not belong to Mr. Goldberg? A. I did not know it.

Q. Did you not so learn from Mr. Gates? A. Afterwards.

Q. How long afterwards? A. Well, I suppose it was six or eight months, sitting down there talking one night about it, first one thing and then the other.

Q. And you then knew from that time on that that property did not belong to Mr. Goldberg? A. At least I thought so; I never knew it.

143 Q. Did you ever talk to Goldberg about the ownership of that piece of ground and stable? A. No, sir.

Redirect examination.

By Mr. SIMMONS:

Q. Mr. Nalley, when was it you talked to Mr. Gates about it? A. Well it was about six or eight months after I was in the house.
Q. Six or eight months after you were in the house? A. Yes.
Q. Did he state whether or not he owned it?

Mr. FIELDS: I object to that as leading.

(No answer.)
Q. What did Mr. Gates say to you? A. We got to talking about that piece of property and I asked him how it was—and that is after he sold him the privilege of it and let him have the privilege of it—and I asked him how that piece of property came. That is how the question came up. I was wondering whether that little piece of property belonged to this or belonged to the house it was at, and he said, no, it was part of lot—I don't know whether he said 2 or what; something like that.
Q. Did he say that Mr. Goldberg owned it?

Mr. FIELDS: I object to that as leading.

A. No, sir.
144 Q. What did he say? A. He said he sold him the privilege of it.
Q. Sold him the privilege of it? A. Yes; the right he had in it.
Q. The right he had in it? A. Yes.

ALFRED NALLEY,
By J. A. SWEENEY,
Examiner in Chancery.

145 Whereupon LEOPOLD RICHOLD appeared for cross-examination.

Mr. FIELDS: On page 7 of Mr. Richold's testimony I object to the following questions as leading: First, "They were in the rear of 1247;" second, "Did Mr. Goldberg point out the property to you?" third, "In the yard of 1247;" fourth, "Did Mr. Goldberg state to you at any time whether or not the stable at the rear in the yard of 1247 belonged to this property?" On page 8 of Mr. Richold's testimony I also object to the following questions as leading: First, "He did not say it belonged to the property;" second, "Did he say it did not belong to it?" third, "Did you or Mr. Shappirio order the examination?" And on page 9 of Mr. Richold's testimony I also object to the following questions as leading: First, "You attended to the whole thing?" second, "Did you go there to collect the rent?" third, "You collected rents from Mr. Goldberg?" And on page 10 of Mr. Richold's testimony I also object to the following question as leading: "State whether or not Mr. Goldberg ever offered to, or stated he would, purchase the property back from Mr. Shappirio."

By Mr. FIELDS:

Q. Mr. Richold, did you have anything to do with this property of Mr. Goldberg's in any way prior to the 11th day of May, 1900? A. He gave it to me a month before on the street to sell it.

Q. Was the 11th of May the first time you called at the property? A. No; the 11th of May I closed the deal with Mr. Goldberg that authorized me to sell it at $6,000. He gave it to me about a month ago, before that, on the street to sell.

Q. Had you been to the property to see Mr. Goldberg about the sale of it before the 11th of May, 1900? A. On one occasion I and Mr. Shappirio went down on a Sunday.

Q. Was that before or after the 11th day of May? A. That was before the 11th.

Q. About how long before? A. About a week, I suppose, or eight or ten days or something like that.

Q. Had Mr. Goldberg fixed on the purchase price at that time? A. He gave me the property to sell at $7,000.

Q. And you showed it to Shappirio at $7,000, and did you and Shappirio go through the property on that day? A. We went down there one Sunday. That was previous to the 11th—before that, do you understand; and we went back, and he showed us all through both houses, and we went back, and we stopped on 1247,
147 and he took us right out there.

Q. When the paper of the 11th of May, 1900, which has been produced in evidence, was signed, did you have an offer from Mr. Shappirio of $6,000 for the property? A. I did, sir.

Q. Did you tell Mr. Goldberg that fact? A. I certainly did, sir; if I did not he would not sell it, him and his wife. How could he sign it if he was not satisfied? It could not be otherwise if he would not sell it. I have a copy of the receipt now in my pocket.

Q. Was it on the same day you made Mr. Goldberg the offer of $6,000 in behalf of Mr. Shappirio? A. You mean on the 11th?

Q. Yes. A. I did, yes; and he accepted of it on the 11th.

Q. Then, this paper which they signed was given to you as authority to make the sale? A. To make the sale.

Q. To make the sale to Mr. Shappirio? A. That is right. I told him who my man was and everything else, because me and Mr. Shappirio was out there on a Sunday before that and Mr. Goldberg showed us all over and showed us everything that belonged to it.

Q. Then, you were acting in this matter on the 11th of
148 May as the agent for Mr. Shappirio to buy this property? A. I acted for Mr. Goldberg and I sold it to Mr. Shappirio.

Q. Did Mr. Shappirio have any other agent in the matter but you? A. No, sir; nobody on the earth but myself.

Q. Were you not, in fact, the agent for Mr. Shappirio also? A. No, sir, I was not. I don't know Mr. Shappirio no more than Mr. Goldberg. They are both my friends today. I want you particularly to understand that. I went to him and got him and his wife

to sell it, on the understanding I could sell it and close it for $6,000.

Q. Did Mr. Shappirio authorize you to offer Goldberg $6,000? A. He certainly did, or I would not make the offer.

Q. Did Shappirio have any other agent in the matter but you? A. No, sir; nobody but me. Nobody knew anything about it but me.

Q. Did you not act for Mr. Shappirio throughout the whole transaction? A. I did not. I examined the title and gave it to the title company to attend to the whole business—that is, right after it was closed, after Shappirio gave me the deposit, and I gave it to Ashford to examine, as I always did. He knows that, and
149 that is the man right there (indicating a representative of the title company). He left it all to me. He did not bother with it at all, because I thought an honest man would sell me the whole business and nothing else. That is the way I felt it in my heart.

Q. When you went to see Goldberg on the 11th of May, 1900, did you take this paper which has been offered in evidence as Exhibit A with you? A. On the 11th he signed that for me.

Q. Did you take the paper with you when you called upon him? A. No, sir; I drew it up on his counter, and there he signed it, him and his wife. Mr. Fields, there is no mistake in this matter; and I drew it up on his counter and he signed it, him and his wife.

Q. On page 6 of your testimony you say, "I brought up the paper to Mr. Goldberg." What did you mean by saying you brought up the paper to Mr. Goldberg? A. I just drawed it up myself, and him and his wife signed it and gave me the authority to sell for $6,000, because he wanted $7,000, and I told him the best offer I had was $6,000. I could not state it any plainer. If you want it any plainer you have got to go to somebody else. I could not sell it for $6,000 unless he was satisfied.

Q. At the time you prepared this paper, where did you get
150 the number of the lot and square? A. He told me himself, Mr. Goldberg.

Q. Is the body of this paper in your handwriting? A. Yes; that is all in my handwriting (indicating same paper).

Q. Did he give you the dimensions of the lot? A. He said I will sell you 34 by—let me see that paper (examining paper). I hereby authorize L. Richold to sell 1245 and 1247 — southeast for the amount of $6,000, square 977, 34 feet front by eighty, with the improvements all around. That is all I understood and that all I did know. I never knew there was any trick behind it, and I wish to God I had never anything to do with it.

Q. Have you ever learned since what the correct dimensions of Mr. Goldberg's property were? A. I never inquired. I took it to Ashford to have the title examined, and there we closed it up, and that is all I knew. And I thought, as sure as God was in Heaven, that Mr. Goldberg sold me 34 by 80, with the improvements thereon. If I was dying I could not say any different. I cannot tell you any more.

Q. How long have you been in the real-estate business? A. About twelve or fourteen years.

Q. Have you had a great many transactions in respect to the buying and selling of real estate in the District of Columbia?

151 A. I have, sir.

Q. Are you familiar with Hopkins' Plat Books? A. I did not look at it in this case.

Q. Did you ever look at the plat of this property at all? A. I did not, sir.

Q. Have you looked at the plat of this property since this suit was instituted? A. No, sir; I never did, because I thought it was a just, honest deal and nothing else.

Q. Wherein, according to your judgment, was it not just and honest? A. Well, let me tell you, you have this property to sell to me; you take me out in the yard, and why, if you are an honest man, don't you come up and say this is only my ground, only to here; why don't you say so and don't mislead me or anybody else with any trickery behind it.

Q. Wherein were you misled? A. I never knew the difference until six months afterwards. I thought I would go into the ground when Mr. Goldberg went back into the yard. I never said much to him. God knows that is a trick I never experienced before, and I never asked any more about it.

Q. Do you know whether or not the property which Mr. Goldberg conveyed to Mr. Shappirio did run back to an alley or not? A. I never thought any different. He told me he would sell 34 by 80—or 84——

152 Q. 80? A. 80. That is all he told me on the street, do you understand, Mr. Fields? I thought he said it honestly like a man, if that is the last word I speak as a dying man—I will sell you the improvements, 30 by 80 or 84, whatever it is.

Q. Does not the part of lot 28, in square 977, which Mr. Goldberg conveyed to Mr. Shappirio, run back to the alley? A. I never knew it was not the whole business. When he told me to sell it I understood him very plain, I will sell you the whole business with the improvements thereon. And I never investigated it. I thought Mr. Goldberg an honorable man and I think so to this day. I have no favor with Mr. Goldberg or Mr. Shappirio; one is as good as the other to me. If there was a trick behind it I did not know it no more than you did.

Q. Do you believe that Goldberg would intentionally mislead you? A. I have got nothing to say about that. Why didn't he come up and say, "Richold, my lot only comes to here." I called him an honest man. Yes, I do say that.

Q. You think he is an honest man yet? A. I certainly do. I have always known him to be as long as I have known him for thirty or thirty-five years. If there is a trick in business I am not in it. I don't like it.

Q. Please explain what you mean by a trick. A. Well,

153 I cannot explain only my own feelings; Mr. Fields, I cannot. It is not necessary. We have our right to assert ourselves

what we believe, and what is right and wrong, and your own conscience will tell you what is right and wrong and nothing else will do it on this earth.

Q. Is it you cannot explain what you mean by trick, or do you decline to do so? A. I certainly decline to do it, because if a man tells me he has property for sale and if he hasn't got it, why don't he tell me like an honest man and not deceive me.

Q. Wherein did he deceive you? A. It is nothing to me whatever, Mr. Fields. I have no interest either way. One is just as good to me as the other.

Q. Wherein did Mr. Goldberg deceive you? A. When I found out—about six months afterwards he called me back about the water-closet and I think he deceived me, yes, sir; if you want to know it.

Q. Did he call you back to the water-closet in the yard? A. Yes.

Q. In the yard of which premises? A. 1247.

Q. Where was the water-closet located in the yard? A. It was right next door. I went to the lady and she would not bother
154 with it, but that was neither here nor there.

Q. Was there a water-closet in the yard of 1247? A. I don't remember whether it was in the cellar or yard. I believe it was in the next house, and I thought it was only a matter of excuse in my own mind.

Q. Is it not a fact, when you come to recollect it, that there was no water-closet in the yard of 1247 at all? A. I went to the lady and said I collected Mr. Shappirio's rent, and she said she would not do anything; and it has been there a long time and Mr. Shappirio never made a complaint.

Q. When did Mr. Shappirio make the deposit of $100? A. After I had that authority to sell it.

Q. Did you give him a receipt for it? A. I certainly did.

Q. Have you that receipt? A. I have not.

Q. Have you ever seen it since? A. No; I gave him the receipt. Certainly I gave him a receipt for $100.

Q. Do you remember what the receipt said? A. I gave him a receipt for the property, just so and so, square so and so, for $100. I forget now; I don't remember. I gave him a receipt, certainly.

Q. Did he pay the $100 to you? A. Yes; he did.

155 Q. What did you do with that money? A. I kept it until the deal was closed, when Mr. Goldberg closed it at Mr. Ashford's office.

Q. Did you tell Mr. Goldberg you received the deposit and gave him a receipt for it? A. Certainly he knew all about it. He signed for it and gave me a power of attorney, and that is all there is to it.

Q. Can you tell us the date of the receipt? A. No; I haven't got it. I could not tell you the date.

Q. You never turned the deposit over to Mr. Goldberg? A. No, sir, I did not; but he understood it was $6,000, and that is enough, and he accepted it. What more do you want?

Q. Now, how long after the 11th of May was it that you gave Shappirio the receipt? A. In between the time of thirty days.

Q. Within thirty days? A. Between that he closed it up.

Q. Within thirty days? A. Within a month's time we closed up the deal.

Mr. SIMMONS: He does not understand the question.

Q. How long after the 11th of May was it you gave Shappirio the receipt? A. I think the next day. I would not do it unless I had the power of attorney from Mr. Goldberg to sell it. I
156 am no fool, gentlemen. I know my business. I did not sell it unless I had a right to sell it, because he asked me $7,000 for it and said it would rent for $70 a month.

Q. When you gave Mr. Shappirio this receipt did he authorize you to attend to the examination of the title and the closing up of the transactions? A. He left it all to me. He did nothing.

Q. Did you attend to it all? A. I certainly did. I made the loan, and it took me eight or ten days before I got the loan and fixed it up, and I gave Ashford the instructions.

Q. Did you give the order to the Real Estate Title Insurance Company of this city to examine the title to this property? A. Yes.

Q. Was that order given in behalf of Mr. Shappirio? A. In my name. I did not bother with no lawyers. I gave it in my name.

Q. Were you acting for Mr. Shappirio then? A. I sold him the property and he gave me the deposit and I had a right. He told me to do it and go ahead and represent him, and I made him a loan from Clarence Norment, and I took him down and introduced him, and we went down together.

Q. I now show you a paper dated May 28th, 1900, directed to the Real Estate Title Insurance Company, authorizing that com-
157 pany to prepare a certificate for thirty-four feet front of lot 28, in square 977, stating that this property was owned by Goldberg, and I will ask you whether or not the signature, L. Richold, which appears to that paper, is your signature (handing witness paper). A. I ordered the certificate and made my signature.

Q. Is that your signature to this paper? A. I ordered the certificate at the title company. Yes, that is my signature. I ordered the papers and attended to the whole business, and I took Clarence Norment down there to get the loan in the meantime.

Q. Were you ever given to understand by Goldberg that he was selling to Shappirio or authorized you to sell any other property than the thirty-four feet front of lot 28, in square 977? A. My dear friend, I have told you once and a dozen times, and I will tell you again, Mr. Goldberg authorized me to sell the property. I have a book where he first gave me the property—an old book——

Q. See if you cannot answer my question. A. Be kind enough to let me look at it my way. Your way is one way and my way is another. I want nothing but what is just and right and honest. I don't care for either. They don't bother me a straw. Goldberg gave me the property 1245 and 1247 11th street southeast, lot 34

by 80 to a thirty-foot alley, seven rooms, bath, all modern improvements; price, $7,000 for the two houses, thirty-five hundred dollars in the Equitable Building Association. House will rent
158 for $70 per month, the two of them together. And on that ground, if you gave me that property, or anybody else, I would work on it, and if you deceived me, Mr. Fields, I cannot help it.

Q. Did Mr. Goldberg ever authorize you to sell to Mr. Shappirio any other property than the 34 feet front of lot 28, in square 977? A. I certainly understood him, and any human being on this earth, I will sell you 34 by 80, with the improvements thereon, and I did not ask any other questions. If you buy a house here and I come to you, an honorable man, and you say, "Mr. Richold, I will sell you my property which is 34 feet front by 80 feet deep to an alley, with the improvements," I don't ask you any more.

Q. You simply took it for granted? A. I certainly did.

Q. You simply took it for granted that the 34 feet front of lot 28 included the stable in the rear of 1247? A. 1247, I thought the whole thing goes back and nothing else.

Q. Did you ever know that the stable in the rear of 1247 was a part of lot 2, in square 977, and not a part of lot 28, in that square? A. I didn't know it.

Q. You simply took it for granted? A. I took it the way he told me. If you sell me property a certain front and depth, with
159 the improvements thereon, I don't go in and dictate about it. My God, if you cannot trust a man you might as well be dead.

Q. Do you buy property on a man's say-so as to his title? A. I thought Mr. Goldberg was just as honest as any man in this country. I did, indeed, and I didn't look into it any further.

Q. Did you ever buy property on a man's representation?

Mr. SIMMONS: I object to that as immaterial.

A. I will take your word what you tell me, I certainly will, and Strasberger and anybody in this house, and if the man is something else I have nothing to do with him.

Q. Do you buy property upon a man's representation as to its dimensions and title, merely upon his own word or after an examination of the plats? A. I take his word a great deal——

Q. If you will let me get through I will give you a chance. Do you buy property upon a man's representation as to its dimensions and his title upon his mere say-so or upon an examination of the plats of the property and of the title?

Mr. SIMMONS: I object to that on the ground that he stated plainly that this property was shown to him and he had a right to take this man's word about the dimensions, and upon the ground the question is immaterial and incompetent.

A. I would take it all my life; anybody would.

160 Q. Without any examination of the plat? A. I would take it. Yes; I would take it. We are dealing with honest

people. We don't have any trick behind it. That is how I do business.

Q. If you relied entirely upon Mr. Goldberg's representation as to the dimensions of this property and the condition of the title, why did you employ the title company to examine the title and report upon it?

Mr. SIMMONS: I object to that on the ground it is not responsive to the examination-in-chief, and on the further ground that the witness has not testified that he took Mr. Goldberg's representations as to the title.

A. Who else shall I employ but the title company? I have to have somebody. I could not examine it.

Q. Would the sale have gone through without an examination of the title? A. No, sir. I don't sell any property unless the title is examined and the title is good.

Q. You would not buy any property without an examination having been made of the plats and the title, would you? A. I always get an examiner to run down the title to see if there is anything more on it than Mr. Goldberg told me—the taxes and trust. I never bothered about anything else. I was satisfied what Mr. Goldberg told me was all right. All I wanted to find out was what the trust was and the taxes, and I believe they put the
161 tax certificate in it.

Q. In all your transactions in buying and selling real estate don't you have the title and the plat of the property examined before you dispose of it? A. No; I never look at it.

Q. Don't you have it done; don't you employ people to do it? A. No, sir.

Q. Why was it done in this instance? A. I always have it examined, Mr. Fields, always, because there might be four or five trusts against it. How do I know? The title might be a tax title, for all I know.

Q. For how long did you collect the rent of this property? A. Since Mr. Goldberg was in it.

Q. Were you acting then solely as Shappirio's agent? A. He gave me the renting of it; yes. He always paid it.

Q. When did you first learn that the property in the rear of 1247 did not belong to Mr. Goldberg and had not been conveyed to Mrs. Shappirio? A. I will give an answer: About five or six months afterwards.

Q. What did you do when you first learned of it? A. I
162 did not do nothing. I thought I would go down in the ground at such a transaction as that. Mr. Goldberg said, If Mr. Shappirio wants to buy it he can buy it, and if he sells the property cheap enough I will buy it back. That is what he said in the yard. I did not say no more to him. I didn't know what to make of the transaction and didn't say anything.

Q. Where did Goldberg pay the rent? A. In his store. He always paid in the store. There never was any trouble about the rent.

Q. Did you tell Mr. Shappirio what Goldberg said about the stable? A. No, sir; I did not.

Q. Why didn't you? A. I felt so bad I could not tell him. So help me God, I could not. I thought it was so much cheating I did not want to say anything. That is the way I felt about it. I felt like going down in the ground when he said, "This belongs to me and I can shut it off."

Q. How long after you learned it did you continue to collect the rent from Goldberg? A. I collected the rents until he went out.

Q. And during all that time did you say anything to Mr. Shappirio? A. Never a word.

Q. Did you ever say anything more to Goldberg about it? A. Never a word. I certainly thought the whole business belonged to Shappirio and to nobody else.

163 Q. Did Goldberg pay you a commission for making the sale? A. He certainly did. He paid me like a man.

Q. He paid you three per cent. of the purchase price? A. Yes.

Q. $180? A. Yes.

Q. How much did Mr. Shappirio pay you? A. Nothing at all. I did not ask him for anything. He did not pay me nothing.

Q. Did he pay you anything at all for your connection with the matter? A. No, sir; he did not pay me anything. We only collect on one side. I am satisfied with one man's commission. He treated me like a gentleman, Mr. Goldberg did.

Q. You are a licensed real-estate broker? A. That part of it is all right. You have nothing to do with that.

Q. Are you a licensed real-estate broker?

Mr. SIMMONS: I object to that question and instruct the witness he need not answer.

Q. Were you a licensed real-estate broker at the time of this transaction? A. What is it different to you?

Q. Will you answer my question?

Mr. SIMMONS: You can refuse to answer.

164 A. I certainly decline to answer that question.

Q. Do you decline to state whether or not you were a licensed real-estate broker at the time of this transaction? A. I have got no answer. Don't go into my business as well as everything else. Don't begin the license business.

Q. Were you or were you not a licensed real-estate broker at the time of this transaction?

Mr. SIMMONS: The witness declines to answer under instructions from counsel.

Q. Why do you decline to answer? A. What is the use of answering? That has nothing to do with the case whatever.

Q. After Shappirio purchased this property, did he ever go there? A. I don't know whether he did or not.

Q. Did you ever see him there? A. I did not.

Q. Do you know whether he made any repairs or improvements on the property? A. I don't know; I cannot tell you.

Q. Do you know when and how Shappirio first learned that the property in the rear of 1247 did not belong to Goldberg? A. He came to me and told me. I didn't tell him.

Q. When did he come to you? A. Some time afterwards.

165 Q. *How long afterwards?* A. *Eight or nine months.* I forget the time.

Q. Please state again your reason for not telling Shappirio immediately what Goldberg told you. A. I will tell you my reason. I felt so bad I did not know what to say, the way the man taken us in. I will tell you the reason why; he said it in plain talk; it was such a deceit and such a great deception I did not know what to say, Mr. Fields, if you want to know it.

Q. Why did you mislead Mr. Shappirio? A. I did not mislead him. Mr. Goldberg misled me, if you want to know the fact.

Q. In what respect did he mislead you? A. If you give me your property, 1245 and 1247, 30 by 84, with the improvements thereon, I sell it without thinking there is any trick about it; that the whole property belonged to the buyer if you sell it.

Q. Did you take it for granted? A. I certainly did; on my dying oath, with my last breath I have to speak, I can testify to that. I never thought anything different in my life.

Q. Goldberg never told you that the stable in the rear of 1247 belonged to it? A. I never asked him for no stable or house or yard. It was thirty-four by eighty, with the improvements thereon.

166 Q. That is all that was said? A. That is all. What would you think, Mr. Fields, I ask you, if you buy a piece of property from me and come to me and ask me, What are you selling? and I say, I will sell you 30 by 80, with the improvements, what else would you expect of any other man on this earth?

Q. You merely took it for granted? A. I took it for granted that all that belonged to the whole business belonged to what I sold to my client.

Q. And in this case you took it for granted that the 34 by 80 feet meant a rectangular piece of ground? A. Everything that belongs to it in the rear; and who, in the name of God, what human being, would think there was something behind it like that.

Q. Goldberg didn't tell you that the stable in the rear belonged to it? A. Why didn't Goldberg come up like an honest man and say, Gentlemen, there is the property, it only comes to here—like an honest man. That is the way to do business and not otherwise.

Q. Goldberg didn't tell you that the stable in the rear of 1247 belonged to him? A. I have told you all I have got to say. I cannot tell you anything else.

Q. You can answer that question. A. I never asked him about the stable and I never asked him about the front house or anything else. Everything that belongs to the property, I took it.

167 Q. Is it not the truth of the matter that Goldberg said nothing about the stable? A. He didn't say anything.

Q. There was no talk about it at all? A. He said, "I will sell you 34 by 80, with the improvements up to the alley."

Q. That is all there was to it? A. That was all.

Q. Does not that strip of ground, 34 by 80, run to an alley? A. I never examined it and I don't know anything about it. I will let you attend to that, Mr. Fields.

Q. Assuming that the strip of ground 34 by 80 does run back to an alley, wherein is the trick of which you complain?

Mr. SIMMONS: I object to that question on the ground that he asks the witness to assume a fact that does not appear from the record, the fact being that the ground is not 34 by 80, but only one little strip of it is 80 feet deep—one narrow edge.

Mr. FIELDS: Complainant's counsel is even in error as to the dimensions of the property his own client bought.

Mr. SIMMONS: I will state that the dimensions are 34 feet on 11th street, and one portion—a very narrow portion—runs back 80 feet to an alley.

168 A. I thought he was deeding all that was there, my friend, and that is all I know of it and all I can tell you. I never knew any different. I thought I was buying exactly what was there.

Q. Well, if the property did run back to an alley, were you not getting all you expected to? A. Mr. Fields, when I spoke to Mr. Goldberg—I speak to you or anybody else, any humble man I am doing business with; you don't think the man is—I have no business expressing my feelings. You tell me you will sell me your property. Now take you yourself as a man and a gentleman, as I know you are, and you sell me 1245 and 1247, and sell me 34 by 80 to an alley, with the improvements thereon. I don't ask you if this belongs to it or that belongs to it; I don't ask you that question. You sell me all you have and that is the end of it.

Q. Do you know what this suit is about? A. I know it now.

Q. What is it? A. I don't know what you are talking about.

Q. Do you know what the suit is about? A. About a little strip back there. I don't know exactly.

Q. Before you testified in this case, did you relate your version of it to Mr. Simmons? A. In what way?

169 Mr. SIMMONS: I object to that question on the ground it is immaterial if he did. You don't suppose I would put a witness on the stand without first talking to him.

A. Mr. Simmons sent for me to testify here. That is all I know.

Q. Did you tell him what you knew about it? A. I certainly did, as I tell you right now the same thing, and I will tell it in any open court. It don't make any difference to me.

Q. Did you receive a letter from me asking you to call at my office about this matter? A. Yes, I did.

Q. Did you reply to that letter? A. I certainly did. You told me I was sued. That is what you said in your letter. I have your letter home yet.

Q. Did you say I told you you were sued? A. Yes; me and Mr. Goldberg.

Q. Are you sure I told you you were sued? A. I think so. I might be mistaken, but I think so.

Q. Is that a correct copy of the letter you received from me (handing paper to witness)? A. I don't remember any more; I cannot remember any more.

Q. Have you the original letter from me? A. I might have burned it up or put it in the waste basket. I might have it and I might not. I cannot say.

170 Letter just shown the witness marked J. A. S. No. 1 for identification.

Q. Did you call on me in reply to that letter? A. No; I wrote you a letter, Mr. Fields. Didn't you receive it? I told you in the proper time I will answer you.

Mr. SIMMONS: I object to all this testimony on the ground it is immaterial.

Q. Is that the letter you wrote me in reply to mine (handing letter to witness)? A. Yes; that is my letter.

Letter just identified by witness marked J. A. S. No. 2 for identification.

Q. You had seen and talked with Mr. Simmons before you received my letter about this matter, had you not? A. No, sir. What should I care about Mr. Simmons or you or anybody else in this case?

Q. Do you know when this suit was filed? A. No, sir; I do not.

Q. How are you able to state whether you talked with Mr. Simmons about it before or after? A. Mr. Simmons asked me to come up and give evidence.

Q. Had he written to you before you received this letter from me? A. No, sir.

Q. Are you sure of it? A. Once is enough, ain't it? Why
171 are you talking about it? Do you think I am crazy?

Q. I would not ask you any questions if I did. When was this suit filed? A. I don't know. I didn't bother with your lawsuits. I have something else to attend to.

Q. Did you see Mr. Simmons before or after the suit was filed? A. I did not.

Q. Did you see Mr. Simmons before or after the suit was filed? A. I did not.

Q. How do you know? A. He sent for me to give testimony. That is all I know about Mr. Simmons. I never saw him before in my life.

Q. I understand you to say now that when you wrote this letter to me, dated May 29th, 1901, that you are sure you had not seen and talked to Mr. Simmons about this case. A. I hadn't seen anybody. Why should I see anybody?

Q. Who wrote this letter to me? A. I got one of my sons to write it.

Q. Didn't you talk with Mr. Simmons before this suit was filed? A. Don't ask me any more those kind of questions. I didn't know Mr. Simmons more than you in this transaction. When I got
172 your letter I answered it, and that is all that is necessary.

Q. Why didn't you call on me in response to my letter and tell me your version of this matter?

Mr. SIMMONS: I object to that and instruct the witness he does not need to answer. This witness was called for cross-examination and not for going into matters that were not gone into in the examination-in-chief, and if the attorney insists on such a question as that I instruct the witness not to answer, but let it be certified to the court.

Q. I repeat the question. Why didn't you call on me in response to my letter and tell me your version of this matter? A. I answered the gentleman. That is all that is necessary, I think. There was no use in calling personally. There is not a hair-pin in it for me, and I answered you for politeness, that is all.

Q. Why would you not tell me before you came on the stand what your version was? A. I have nothing at all to do with it.

Q. Didn't you tell Mr. Simmons before he put you on the stand? A. I told him when he put me on the stand.

Q. Did you not tell him before he put you on the stand? A. I told him before.

Mr. SIMMONS: Yes; he told me before he went on the
173 stand. I talked with him and went over it fully before he went on the stand. I think it was the day or the day before the testimony was given.

A. He talked to me and I told him all about it.

Q. I suppose that is all you know about the whole case? A. That is all I have to say. I wish I never saw it.

Redirect examination.

By Mr. SIMMONS:

Q. In regard to this paper, Mr. Fields called your attention to it being the examination of the title to the property, state whether or not any of that is in your writing, except your signature. A. Yes; my own writing, the signature.

Q. Did you write any of the rest? A. No, sir.

Q. Did you look at the paper and examine it? A. No, sir.

Recross-examination.

By Mr. FIELDS:

Q. Who gave the title company the information as to the lot and square and the name of the owner and the frontage of the lot that

appears on that order? A. I don't remember, absolutely. I attended to it, but I don't remember. My memory is not as
174 good as in former years.

Q. Didn't you give it to the company? A. I certainly did.

The paper referred to, order for certificate of title, marked J. A. S. No. 3 for identification.

LEIPOLD RICHOLD,
By J. A. SWEENEY,
Examiner in Chancery.

175 Whereupon JACOB I. SHAPPIRIO appeared for cross-examination.

Mr. FIELDS: To the entire testimony of the witness Jacob I. Shappirio, as is contained on pages 11 to 22, both inclusive, of the record, I object upon the ground that he is an incompetent witness, being the husband of the complainant Mary Shappirio.

Mr. SIMMONS: Counsel for complainants now states that such objection is not well founded, and that the same comes too late, witness having already testified.

Mr. FIELDS: Reserving the objection to the competency of this witness, I object to his testimony on page 11, contained in his answer beginning "Mr. Richold" and ending "see the location," upon the ground that the same is hearsay. To his testimony on page 11 of the same answer, beginning with the words "so in the meantime" and ending on page 12 with the words "or not," I object as incompetent, irrelevant, and immaterial. To so much of the same answer on page 12 as begins with the words "He took us into" and ending with the words "from the alley, of 1245," I object for the same reason. To the question on page 12, "He took you first into 1247," I object as leading. To the following questions on page 13 I object as leading: First, "Before the sale;" second, "Did he say to you that this piece of property on which the stable of 1247 is located was all a
176 part of the property." On page 14 I object to the question, "Did he point it out as a part of the property," as leading. On page 15 I object to the question, "Was it because you suspected anything wrong, or was it simply because it was the usual mode of examining the title?" as leading. To the second answer on page 15 I object as incompetent, irrelevant, and immaterial. To the question on page 15, "You knew at the time that Mr. Richold was the agent of Mr. Goldberg," I object *to* as leading. To the second and third answers on page 16 I object as incompetent, irrelevant, and immaterial. On page 17 I also object to the testimony beginning "And I said" and ending "at 11th street" as hearsay and as incompetent, irrelevant, and immaterial. To the answer on page 17 beginning with the words "Well, Mr. Richold," and ending with the words "in the sale," I object as hearsay. To the question on page 17, "Now, state whether or not there was any offer made by, or proposition that came from Mr. Goldberg, to buy the property

back from you," I object as leading. To the answer on page 17 beginning with the words "He says" and ending with the words "tell him before," I object as hearsay. To the question on page 17, "Was the offer to sell at a loss each time," I object as leading. To the question on page 18, "State whether or not you had any objection from parties who desired to rent on account of the back yard being in that condition," I object as leading. To so much of
177 the answer on page 18 as begins with the words "Stating there was" and ending with the words "no convenience" I object as hearsay. To the last answer on page 18 I object as incompetent, irrelevant, and immaterial. To the question on page 19, "That was the principal part, to see how much you owed," I object as leading. And to the whole of the testimony on page 19, beginning with the first question and ending with the third answer, I object as incompetent, irrelevant, and immaterial.

To the question on page 20, "State whether or not Mr. Goldberg before vacating the premises made a request to you to reduce the rent," I object as leading. To the question on page 21, "Did he state anything at that time about the yard not being a part of the property," I object as leading.

Mr. SIMMONS: Counsel for the complainants states now to the attorney for the defendants that he shall insist on the trial that such objections are not well founded, and for the further reason that the objections were not taken at the proper time.

By Mr. FIELDS:

Q. What is your business? A. I am now in the merchant-tailoring business, and I also have a place where I sell general merchandise.

Q. Where are the places of business? A. The merchant-tailoring place is 413 11th street northwest, and the other is 905 D
178 street.

Q. How long have you been engaged in business on your own account in this city? A. On my own account ever since 1889.

Q. How long have you been located on D street? A. On D street ever since 1889.

Q. Do you own the premises 412 Spruce street, where you live? A. Yes.

Q. How long ago did you buy that? A. I bought that last May, two years ago, to the best of my recollection.

Q. Does it stand in your name? A. Yes.

Q. Who attended to the matter of the purchase of that house?

Mr. SIMMONS: I object to that question on the ground it is immaterial and incompetent.

A. You mean at 412 Spruce street?

Q. Yes. A. A gentleman by the name of John Chesley.

Q. How long ago did you buy that house? A. Just about two years ago last May.

Q. What part did you take in the matter of the purchase and closing of that transaction? A. I did not take any. John Chesley fixed everything up.

179 Q. Did you rely entirely on this other party? A. Yes.

Q. When did you first see this property on 11th street southeast involved in this suit? A. Mr. Richold came to me and told me of that property on 11th street southeast, and he told me some time, if I had time, he would take me out and show me the property, and that he thought it was a very good investment, and I went over with him on Sunday. We went over there and we had a talk with Mr. Goldberg on Sunday—that is, I looked through the house only, and we went through the rooms in 1245 and 1247.

Q. How did Richold know you wanted to buy some property? A. I told him if he ever came across any good investment to let me know.

Q. And how long was it before this Goldberg property came up that you told him that? A. I guess it was a month or six weeks before. That was the first time I ever saw Mr. Richold. A friend of mine introduced him to me. I met him on the street. I was talking to him about trading off the property on Spruce street, and I told him to look out and see if he saw anything that was a good investment and I would trade it off. That is the first time I ever knew him. He afterwards came around and told me that Mr. Goldberg would sell, but he would not trade.

Q. When you went down to see the Goldberg property with Richold on Sunday, that was the first time you went

180 down there? A. That was the first time I ever went down there.

Q. Did you ever know a man by the name of Cohen who kept a store on 11th street southeast? A. I did.

Q. What was the number of his store? A. 1247.

Q. Did you ever work for him? A. I did.

Q. When? A. In 1884.

Q. In 1884? A. I guess it must have been in 1884.

Q. How long did you work for him? A. Several months.

Q. In what capacity? A. As a salesman.

Q. Did Cohen carry on a store? A. Yes.

Q. Cohen lived on the premises? A. Yes.

Q. Where did you live then? A. I used to board with him.

Q. Did you live in the house? A. Yes.

Q. How long did you work for Cohen? A. Very short in that place; two or three months.

181 Q. Was there any stable at that time in the rear of 1245? A. Now, I cannot tell that, Mr. Fields, honestly, to save my life.

Q. Was there any stable at that time in the rear of 1247? A. 1245, you mean?

Q. 1247 now. A. To the best of my recollection, 1245 was then empty. It was not built up, but 1247 I cannot tell you to save my life the location of the back ground, because really it has been so

long ago and I never paid much attention to the back part of the property.

Q. There is a window in 1247 that looks out into the back yard, is there not? A. Yes.

Q. And was when you worked there? A. Yes.

Q. Can you recollect that the ground in the rear of 1247 was a great big lump of dirt above grade? A. I don't recollect that. I don't know anything about it. The first time I ever learned about that was when I went down to talk with some of the neighbors, and they told me about it. I never even had an idea about it. I only found out about it when I entered this proceeding. That is the first time I ever heard there was ever a hill there or anything else.

182 Q. Can you recollect when you worked in 1247 for Cohen that the ground upon which 1245 stood was above grade and unimproved? A. I think, to the best of my recollection, it was plain ground.

Q. Do you think it was graded? A. Plain ground. I think they had something growing there—vegetables, if I mistake not. It was more like a garden lot. That is really why I never went in the back part of the building.

Q. Did you ever look out of the back window of the store? A. I don't know as I did.

Q. You cannot recollect now whether there was a stable in the rear of 1247 or whether it was a lump of dirt there? A. That I cannot possibly tell you. I don't remember.

Q. Can you recollect whether there was any yard at all in the rear of 1247 when you worked there? A. That I cannot tell you because I hardly ever had occasion to go out in the yard.

Q. In your testimony, Mr. Shappirio, you spoke about Mr. Goldberg's taking you out the back way of 1247, and his standing in the back door leading to the yard? A. Yes.

183 Q. Is there any back door to the building 1247 11th street? A. There is. I will tell you how it is. There is a little summer place, a kind of summer kitchen, and the door of that you use. There is a door leading out into the yard of 1247 and that is the main door of the building, and to the best of my recollection it is facing west.

Q. In the back building? A. In the back building in 1247, and then from there there is another door facing from the south.

Q. Are you not wrong as to the points of the compass? Here is the door of 1247 of the kitchen facing this way (indicating on Exhibit C to the bill). A. You are facing north—the building is facing north and south, is it not?

Q. No. A. Well, I may be mistaken in locating the points of the compass. You can explain that. I cannot give you north and south, but I can explain so you can understand it. It has a door——.

Q. I do understand it. Is there any door in the back building of 1247 facing west? A. That building is facing east and west. Well, there is a door, yes.

Q. Is it in the back part? A. Yes, it is in the back part. One door is facing this way. That is leading from the building of 1247, and there is a door from 1247 facing south.

184 Q. In what direction does the door from the back building, by which I mean the brick building and not the summer kitchen, face? A. That would be north.

Q. Then, there is no door in the west wall of the back building of 1247? A. Well, I call it a part of 1247.

Q. Listen to my question: There is no door in the west wall of the back building of 1247? A. I had reference to the door in the summer kitchen of 1247.

Q. Then, there is no door in the west wall of 1247? A. Well, there is only one door and that is facing north.

Q. And there is no door from the brick wall facing west? A. No.

Q. There is, however, a window in that brick wall facing west, which is barred up? A. Yes.

Q. The door from the back building of 1247 facing north opens into this summer kitchen? A. Yes.

Q. How many doors has the summer kitchen? A. It has two doors.

185 Q. And in which direction do those doors face? A. In fact it has three doors—that is, one opening out into the main building of 1247 and one into the yard of 1247—that is, opening into the yard of 1247, and one opening into the yard of 1247 and 1245. It is really in 1247, because it is the door leading east opening into the L or open space between the two buildings 1245 and 1247.

Q. East? A. Yes. It opens up in the premises of 1247, because the whole building stands on 1247—that is, the summer kitchen stands in 1247.

Q. Is there not quite a little concrete yard in there? A. Sure; one-half is for 1245 and the other half is for 1247.

Q. And into this concreted yard the east door of the summer kitchen opens? A. I cannot tell you which way it opens.

Q. When you go out of the east door don't you go into the concreted yard? A. I don't think I ever went through it.

By Mr. SIMMONS:

Q. Through the east door? A. Through the east door, I never went through it. I know there is a cellar back of that small kitchen.

By Mr. FIELDS:

Q. To the east of it? A. To the east; yes. The summer kitchen only extends on 1247, to the best of my recollection.

186 Q. The summer kitchen has a door facing east and a door facing west? A. It has a door facing east and a door facing west, and also a door on the south.

Q. That door going into the building? A. Yes.

Q. Do the doors in the summer kitchen open inwardly or outwardly? A. To the best of my recollection, the door leading west opens inwardly, inside of the building of the summer kitchen.

Q. And the door leading east? A. The door leading east I cannot tell you. I don't remember.

Q. This fence about which complaint is made is located to the west of the west door of the kitchen, is it not? A. To the west of the west door; yes.

Q. It is claimed that a person could not get out into the yard from the west door of the kitchen by reason of this fence being so close? A. Yes.

Q. Now, does not the west wall of 1247 project beyond the west wall of the summer kitchen? A. Very little. It would not make enough space for anybody of ordinary size to squeeze in between the fence and the door.

187 Q. How much does the brick wall project? A. Perhaps two or three inches, and maybe not that much. I never paid any particular attention to that.

Q. Is there any obstacle of any kind in the way of going out of the east door of the summer kitchen into this concreted yard? A. I never went through it and I cannot say. I cannot tell you whether there is anything in the way. The only thing I know is there is a cellar right close to it, but whether the door opens into the cellar or outwardly I cannot tell you.

Q. Cannot you easily go out of the east door of the summer kitchen into the yard? A. I cannot tell you, because I never went through it even since Mr. Goldberg moved out of it. I never went through it, because I always went the other way.

Q. When you get into this concreted yard between the two buildings is there a concreted walk running back and south of 1245 to the stable and into the alley? A. Well, to the best of my recollection it runs all the way out there to the stable.

Q. And about how wide is that concreted walk? A. That I never paid any attention to.

Q. Four or five feet? A. I really could not tell you. In fact I haven't seen the ground properly at any time, only the first time when Mr. Richold and myself went out there.

188 Q. Is that passageway wide enough for a person to walk out through without any difficulty? A. The passageway from 1245?

Q. So is this concreted space between the two buildings that leads out to the stable and alleyway wide enough to walk through and go out without any trouble? A. I suppose it would be easy enough to walk through after a man is in the yard. He can walk there then over to that stable, I presume.

Q. When a man gets into this concreted yard between the two buildings is there any difficulty at all about his going on out to the alley? A. No; not going through the stable. I don't think he would have much difficulty.

Q. There is nothing in the way to prevent it? A. Not to my knowledge; only the fence.

Q. Is there any door to the south wall of the back building of 1245? A. Yes; there is a door.

Q. Does not that door lead into this same concreted yard? A. Yes.

Q. And can you go from that door on through the stable into the alley? A. I guess you can.

Q. Is it not a fact, Mr. Shappirio, that there is an open and easy entrance or passageway through the east door of the summer
188½ kitchen of 1247 clear out to the alley in the rear? A. No; I don't think so, for the simple reason that the cellar is too close to it. I never tried to go through the door since they put the fence in there, and I don't think anybody could get through on account of the cellar being in the way, because the cellar is right close to that door.

Q. Suppose the cellar doors are closed? A. Even then it would be in the way. You don't feel like walking through here and walking there over a cellar door (indicating).

Q. Is not the top of the cellar door below the level of the threshold of the east door of the summer kitchen? A. No, sir; it is a good deal higher than the summer kitchen.

Mr. SIMMONS: I object to all this on the ground it is not responsive to the examination, and, further, it deals with a proposition that is impracticable, in proposing to take a man over one piece of property and carrying him over to the other in order to get out into the alley.

Q. Are you quite sure that the level of the cellar doors is above the level of the threshold of the summer kitchen? A. I am almost positive.

Q. And your idea is that those cellar doors create an obstacle in the way of easy egress and ingress? A. I want to state this: You want to ask me under the presence circumstances you could
189 get out of 1247 over the cellar door to the stable. You could not. Suppose I sell 1245, where would the man go out? He would not have a place to go out unless he went over the cellar, and he could not go the other way.

Q. Could you not sell it with the reservation of the right of way? A. That is a question. I don't think you would like to buy a piece of property and have the privilege of somebody else's yard. I told you I could go into the yard of 1245, or through the yard of 1247, when there was no fence there, and there was no fence there prior to the time I bought the property. All the yard was in one piece, the yard of 1245 and 1247, or rather the stables were all together.

Q. Does the fence that Goldberg put up there bar this passageway to the alley? A. It does from 1247; of course it does.

Q. How much space is there between the north line of fence——

Mr. SIMMONS: We admit you can go from the east door of the summer kitchen, around by the cellar areaway, over into the yard of 1246, and then into the stable and then through the stable into the alley.

Q. When you examined this property did you notice how the stable door of 1245, leading to the alley, was locked? A. I don't remember. There is a bar across.

Q. And was that stable locked when you examined it?

190 Mr. SIMMONS: What do you mean by locked?

Q. With the bar. A. That I cannot tell. I know we came from 1247 into 1245 stable, to the best of my recollection.

Q. Do you mean you came from the alley into the stable of 1245? A. Yes; right from the alley. First he took us through the kitchen of 1247 into the yard of 1247, then into the stable of 1247, then from there he took us through the door of the stable of 1247 and let us into the other stable.

Q. That is your recollection? A. That is to the best of my recollection.

Q. Did you hear Mr. Richold testify when he was first examined? A. No; I did not. I paid no attention to it. Mr. Richold was not present when Mr. Goldberg took us out into the yard. Mr. Galloway and myself were the only two.

Q. Do you still state that the stable of 1245 was locked with a bar? A. I suppose the bar was thrown across. It is not very much protection. I think you could open it with your hands. It is really no protection.

Q. I suppose when you examined this property you took it for granted, of course, that the stable and the rear of 1247 be-

191 longed to the property and belonged to Goldberg? A. I did not understand it any other way, because Mr. Goldberg did not say he did not own it, and he would not take me out to the back yard and point out the stables, both of them, unless he did.

Q. Goldberg didn't say whether he did or not? A. He pointed it out. I will tell you the very words he said. He said to Ike, his brother-in-law—Roginski—he was standing in the very door. It is the west door of the summer kitchen. He says to us, "Take him through and show him all the ground and stables," and he took us in the rear of 1247 and showed us the stable and said it would be a nice stable to keep a horse and buggy and raise chickens, and he took us from that and showed us the empty lot. I didn't know whether it was a lot or an alley. He said there was a thirty-foot alley.

Q. Did Goldberg himself tell you whether this stable in the rear—— A. Mr. Goldberg was standing right in the door. He told Ike Roginski to take us in there and show us everything that belonged to him. I was sure if it did not belong to him he would not tell him to take us through. And another thing, there was no fence. If there had been a fence or anything of the kind it would raise the suspicion in my mind and I would have asked Mr. Goldberg about it, whether it belonged to him or did not.

192 Q. That is what I am coming at, Mr. Shappirio. Is it not a fact that Goldberg did not say whether the stable did or did not belong to him? A. He still might have said that, Mr. Fields.

Q. Did he say it? A. He might as well.

Q. Did he say it? A. Possibly he did not, but he said to Ike Roginski, "Take him through and show him all the stables and yards." Now, does it mean anything else? It means exactly the same words. It means, "That stable belongs to me."

Q. I am not asking you what you thought he meant. My question is did Goldberg say to you whether the stable in the rear of 1247 did or did not belong to him? A. The words he said to me I will tell you. I will explain to you as well as I can. He said to his brother-in-law—he was standing in the door, and he said, "Show him through the stable."

Q. Is it not a fact that you took it for granted from what Goldberg said to his brother-in-law, Ike Roginski, that the stable in the rear of 1247 belonged to the property? A. Was a part of the property.

Q. And is it not also a fact that you and Mr. Goldberg never had any special talk about the ownership of that stable? A. He
193 never said to me one word out of the way and never told me it did not belong to him.

Q. He never said it did or did not, and you never inquired? A. I could not say he did not, because he pointed out what belonged to him, as much as to say it belonged to him.

Q. You never made any specific inquiry whether it did or did not? A. I never had any cause. Why should I make any specific inquiry as to the rear of 1247 when he told his brother-in-law to take me out and show me everything that belonged to him.

Q. You were there and saw this property without any fence or back yard between the two? A. The two back yards were all in one.

Q. And Mr. Goldberg told Roginski to take you out and show you through the property. A. He was standing there all the time.

Q. And from what Goldberg said to Roginski and Mr. Roginski's going out and taking you through this property, you took it for granted that this stable in the rear of 1247 belonged to Goldberg, and was included in the property he sold? A. Well, I would not think a man would offer to sell me anything that did not belong to him. He did not point out 1247 no more than he did the stable, so far as that is concerned. He did not point out anything
194 in particular. He said to show me through the ground and everything that belonged to him, but he did not specify any particular part, and, knowing that the stable was not shut off from any other part, nobody could have any hesitancy in believing otherwise than that it belonged to Mr. Goldberg.

Q. You took it for granted? A. I did not take it for granted.

Q. Are you quite sure that Goldberg stood in the west door of the summer kitchen all the time? A. To the best of my recollection, he stood there until we got through. It did not take much time; only a few minutes.

Q. Do you recollect whether Goldberg was standing in the door when you came back from the alley? A. That I could not say

positively. I don't remember whether he was still standing in the door or back of 1247.

Q. After you went back in the alley, did you come back and then go through the upper portion of the two buildings? A. We went through the upper part of the building before we went in the yard.

Q. Is there any improved property or any buildings at all in the rear of the stables of 1247 and 1245, or is it all vacant ground? A. It is all a vacant lot.

195 Q. There are no buildings in the rear of this property at all clear up to 5th street? A. I know there is a big vacant lot, and that is what he told me, that it was an alley all the way from M to N streets. I was not acquainted with the property myself, but there were no buildings down there, and I thought it was strictly an empty lot and that there was an alley back of the building.

Q. There was no improved alley? A. There was no improved alley, only he showed me right where the wagons were driving through.

Q. It was all empty ground? A. All empty ground, but he showed us right back of the stable where wagons were driving right through to N street.

Q. You did not ask Goldberg whether the stable in the rear of 1247 belonged to him or not? A. I did not ask him whether the building of 1247 belonged to him. I did not ask him anything.

Q. Would you have bought this property without having the plat and title examined? A. Well, I relied upon Mr. Goldberg's honesty. I did not think a man would sell me what did not belong to him. If I had the least idea Mr. Goldberg would defraud me in this deal that way I certainly would have gone myself and examined the title, or have somebody to examine it. In this case I was so con-

196 fident, and I have known Mr. Goldberg so long I did not think he would wrong me in any way, but I found out it was different.

Q. You did, in fact, have the title examined? A. I did not. Mr. Richold had the title examined to find if Mr. Goldberg owned the lot.

Q. I suppose you paid for the examination? A. I don't know. I suppose that goes to the purchaser's bill, to the best of my recollection.

Q. Where did you close this transaction? A. At the title insurance company's office.

Q. Who drew the deed to your wife? A. I suppose the title insurance company did.

Q. The title insurance company was not employed by Mr. Goldberg in the transaction? A. They were not employed by me.

Q. Hadn't you authorized Mr. Richold to have the title examined? A. I didn't have to authorize him. He was supposed to give me a clear title. When I buy a piece of property I rely upon the man to give me a clear title, and it was his duty to give me a clear title as the selling agent.

Q. Did you tell Richold to attend to the matter of the examination of the title and the plat? A. I asked him whether it had a clear title, and he said he would attend to that and would not sell me anything unless it had a clear title. That is the only thing he said.

197 Q. You mean to say that when Richold ordered this certificate of title and ordered the examination of the plat that he was acting as Goldberg's agent? A. Sure. He had to give it to me. He said he always did all his business with the title insurance company. I asked Mr. Richold whether the property had a clear title. He said, "I have all my dealings with the title insurance company, and if there is anything wrong about the title you get your deposit back," and, of course, I thought that was the end of it.

Q. Who paid the title company? A. That, I suppose, goes to the purchaser of the property. I presume I paid it, but I did not order it. I told him at the time I thought the man that sold the property ought to pay for it, and he said no; and I paid for 412 Spruce street the same way, although I didn't order it.

Q. Mr. Richold testified, on page 8 of the record, as follows: "Mr. Shappirio authorized me to order the deed and attend to the whole business." A. That is really a part of his duty as the agent.

Q. As whose agent? A. As agent for the seller, of course. When I sell anything I certainly have to sell something with a clear title. It don't make any difference whether it is a piece of goods or a house or anything else.

Q. Did you pay Richold anything for his services in this
198 transaction? A. Not a particle; not a cent.

Q. Did he ever render you any bill for such services? A. No, sir.

Q. Why did you get Richold to attend to this matter for you? A. Because he was the one that was introduced to me as the agent of the property, &c., and he came to me and told me he would sell it to me, and therefore I thought that Mr. Richold was competent enough to look out for my interest in that way as well as anybody else. I had confidence enough he would attend to it.

Q. Then Richold was looking out for you in the transaction? A. It was a part of his duty as agent for the other man. He has got to satisfy me, to give me a clear title, or otherwise he knows I would not buy.

Q. What was Richold to attend to for you? A. Nothing. He was supposed to give me the property clear. That is the only part he was to attend to, and that he was to attend to for Mr. Goldberg more than for me.

Q. What do you mean by this testimony on page 14: "I left it to Mr. Richold. That was on account of my being occupied on 11th street in business, and I did not have the proper time to attend to it, and I thought I better give it to a man who was more able to at-

tend to it than I was, and I depended solely on Mr. Richold"?
199 A. So I did.

Q. What did you mean? A. I meant I did not have time to examine the title, and I did not have time to attend to anything in that particular and look into it, and as Mr. Richold was the agent of Mr. Goldberg to sell me the property, I thought as I have known Mr. Richold a short while and got acquainted with him—and I was confident he would treat me right. That is why I relied on Mr. Richold *and would* give it to me in proper shape.

Q. Do you mean you relied on Mr. Richold as to the title and to the property that was to be transferred to you? A. I don't mean I paid him; I don't mean I employed him as an agent to look out for my interest, yet I wanted him to do it. I would have gone to somebody else, and I would not have gone to Mr. Richold. It was simply a matter of confidence. That is why I got Mr. Richold. If I hadn't confidence I would not go to Mr. Richold. I would have gone to somebody else. It was the same case on Spruce street. I did not go to anybody else; I relied on Mr. Chesley.

Q. Do I understand you to mean that in the whole of this transaction, from beginning to end, that Richold never acted for or represented you, but only Goldberg? A. That is all I can understand.

Q. That is your understanding of it? A. That is my
200 understanding of it. I am sure he would not act for me unless he got some compensation for it, and I never paid him a cent. I don't think any man would do any work for nothing.

Q. Did you know that Richold was to get a commission from Goldberg for the sale? A. I knew that.

Q. Do you know the commission? A. I knew they were usually getting cent.

Q. Did Goldberg ever say anything to you as to the size of that property or the dimensions of it? A. No; he never spoke to me in regard to the dimensions, feet, or anything of that kind.

Q. What do you mean by testifying on page 14 that you did not have any reason to believe that the statements made to you by Goldberg in reference to the size of the property and yard were not so? A. Well, that is by the contract, the contract to deed it to me by Mr. Goldberg, which was to run 24 feet front by 80 feet in depth.

Q. That is the only statement of the dimensions you ever saw from Goldberg? A. That is the only one I ever saw or ever spoke of, in fact.

Q. Now, if you placed confidence in Goldberg in this transaction and relied upon what you say that he said and did in regard
201 to it, why did you have the plat and title of this property examined? A. I didn't have it examined at all. Mr. Richold had it examined.

Q. Was the certificate of title delivered to you with the deed? A. I really could not tell you whether I got it or the mortgagee is holding that; I really could not tell you.

Q. You saw it? A. The only papers I paid any attention to—that is really the fact—that I paid any attention to at all at the

title insurance company's office, I simply looked over the amount I was indebted for.

Q. That is, in the deed of trust? A. The amount in the deed of trust, $4,500; that is the only thing I read, and I signed it, and I never examined the deed. I looked at the amount in the deed of trust, $4,500.

Q. Well, between the three—Richold, Goldberg, and the title company—upon whom did you most rely in this transaction? A. I relied simply upon Mr. Goldberg.

Q. On page 15 you say, "I relied on Mr. Richold." A. Well, I relied in some particulars between him and Mr. Goldberg that they would treat me right. Of course I had some confidence in Mr. Richold, or I would have gone to somebody else to look after my interest.

202 Q. I suppose you know that neither Goldberg nor Richold were title examiners? A. I had confidence they were not.

Q. Is that why the title insurance company was employed to examine the title? A. I did not employ any title insurance company. For my part, it could have been drawn up by anybody.

Q. When did you first learn that the strip of ground in the rear of 1247, on which the stable stood, was not included in your deed from Mr. Goldberg? A. Really, to give you the fact, I did not know until I went there and saw the fence around it. That is the fact when I found out; that was after Mr. Goldberg moved out of there, and not before. Of course, I heard some remarks—somebody talking—but I thought it was only hearsay; trying to make me sell it or something of that kind.

Q. Hadn't you actually learned of it in the latter part of September or the first part of October following the sale? A. I don't know as I did positively. I heard something about it.

Q. What do you mean by your testimony on page 16, reading as follows: "Q. How long ago was it since you first learned about this? A. To the best of my recollection, it was about the last part of September or the first part of October"—— A. That means I just heard.

203 Mr. SIMMONS: That is just what he says if you continue his answer.

Q. From what source did you first hear? A. The way I first heard it, Ike Roginski came over to a brother-in-law of mine—he used to come often around there—and at first he said that Shappirio did not buy such a bargain. It is full of malaria down there, and if Goldberg moved out he could not rent it; and I could not understand why he was talking that way. I hadn't the least idea. I knew I never did Mr. Goldberg any harm, and I did not know why he wanted to talk to me that way; and one day he came there and he says to my brother-in-law, "Shappirio bought a lot in front, and my sister has got him in behind."

By Mr. SIMMONS:

Q. Who is the sister? A. Mrs. Goldberg.
Q. Mr. Goldberg's wife? A. Yes.

By Mr. FIELDS:

Q. Did you make any investigation then? A. I started to inquire.

Q. From whom did you make the inquiry? A. I went over to the Bigelows, and I wanted them to find out something for me, and they started to investigate it.

204 Q. Were they lawyers? A. I presume you know Bigelow & Bigelow? They investigated it for me, and found out Mr. Goldberg bought that lot in his wife's name.

Q. When was it you consulted Bigelow & Bigelow? A. Only a short time before I consulted Mr. Simmons.

Q. What investigation did you make last fall when you first heard of it? A. That is all the investigation I made. I really did not know then after I saw Bigelow & Bigelow, until I saw the fence, whether it was so or not, because I never went in the yard of 1247 with the exception of once, when I had Mr. Galloway come there to put in the waterspouts there and paint the roof. That is the only time after the sale that I went in the yard of 1247, and even then that was somewheres in December, to the best of my recollection, that Mr. Galloway put the spout on, and even then there was no fence there or anything of the kind.

Q. When did Richold first tell you that this strip of ground—— A. Richold didn't tell me at any time, not until I commenced to talk to him and he told me about it.

Q. Didn't Richold tell you last October that the stable did not belong to you? A. Not until after I spoke to him.

Q. When did you first speak to him? A. It must have been two or three months after Mr. Goldberg told Mr. Richold that Mr.

205 Richold came to me. He was afraid to come around. I wanted to see him, after hearing all these hearsays. I wanted to see Richold, and he kept away, and he would always send me a check instead of bringing the rent.

Q. Do I understand you to say that Richold didn't tell you some time last October that this strip of ground did not belong to you? A. To the best of my recollection, he did not tell me anything about it until November or December, and then he did not tell me it did not belong to me, but then he said that strip of ground was not included in the sale.

Q. When did he tell you that? A. It must have been either the latter part of November or the beginning of December, to the best of my recollection.

Q. On page 17 you state as follows: "Mr. Richold said to me that Mr. Goldberg told him to tell me that the piece of ground in the rear of 1247, together with the stable, was not included in the sale. That was some time in October." A. Was it October? I might

possibly be mistaken in the month, but I know it was one of the fall months. I presume I did not give any definite time even then. To the best of my recollection, I cannot recollect the month it was in.

Q. Who told you that Goldberg had sent Mr. Guy to
206 Richold? A. Mr. Richold told me that.

Q. Have you any information at all upon that subject, except what Richold told you? A. That is all, sir.

Q. You don't know whether Mr. Guy did go or not? A. No, sir; but I have no reason to disbelieve Mr. Richold, because I did not know why he would go to tell me a lie.

Q. Did you ever talk with Mr. Guy on the subject? A. No, sir.

Q. Do you know him? A. Yes; he says, I heard you bought the property of Goldberg; and I told him yes.

Q. The complaint is made that this fence which Goldberg put up in the rear of 1247 prevents the closing of the shutters of the window in the west wall of the back building of 1247. Is it not a fact that those shutters could not be closed, whether the fence was there or not? A. Why should they not unless they were weather-beaten and the hinges could not be worked; otherwise why could they not be closed and opened?

Q. Is that window barred? A. The window is barred up, but the shutters are outside of the bars.

Q. Don't you know that the bars absolutely prevent the shutters from closing? A. That may be. I never looked into that
207 fact about the bars, but I know you cannot open or close the shutters notwithstanding. With the bars on there, still you could put them that far (indicating) beyond the bars—that is, they would come together.

Q. Are not these shutters hinged with hinges in the usual way? A. I think, to the best of my recollection, they are in the usual way.

Q. Could you not lift them off the hinges and rehang them in the usual way?

Mr. SIMMONS: I object to that as immaterial and incompetent.

A. I don't know; I suppose they could.

Q. When did Goldberg move out of this property? A. To the best of my recollection, he moved out—I don't know the exact date, but his rent was due on the 6th, which was on a Monday, if I mistake not—Monday, in the month of May, 1901. I don't know the exact date that he moved out, whether it was Friday or Saturday, but I know he moved out before that Sunday.

Q. What did you learn at the District building when you went there to investigate whether this strip of ground belonged to you or Mr. Goldberg? A. Well, I did not learn anything with the exception that he said that part of lot 28 was only one lot, and was running sixty-two feet eight inches according to the plat.

208 Q. They told you that at the District building? A. That is what they told me there.

Q. And when was it you went to the District building? A. The exact date I cannot tell you, Mr. Fields.

Q. Last fall, was it not? A. It was one of the fall months.

Q. You say you did not know anything definite about the ownership of this strip of property until the fence was put there? A. Really, I can say that, even after they told me so. I did not think Mr. Goldberg would treat me that way, because he had no cause to treat me that way. I thought maybe he bought it for me.

Q. I understand you did not pay any more attention to what Roginski and Richold told you? A. Richold did not tell me definite that the ground did not belong to me. It seems to me he said that Mr. Goldberg said that that piece of ground did not belong to me; it was not included in the sale.

Q. Why didn't you act upon these suggestions that the property did not belong to you? A. Why should I act until I knew it positively?

Q. Why didn't you find out? A. I did not think it was necessary to find out until I heard so from Mr. Goldberg.

209 Q. Why did you expect to hear from Goldberg? A. I thought positively if it was so Mr. Goldberg would certainly come down and tell me.

By Mr. SIMMONS:

Q. He was your tenant at that time? A. Yes; he was my tenant. I thought it was no more than his duty to tell me.

By Mr. FIELDS:

Q. Did Goldberg ever state to you after the sale whether the property in the rear of 1247 did or did not belong to you? A. He never stated to me.

Q. How often did you see or talk with Mr. Goldberg while he was your tenant? A. The only time I spoke to him, to the best of my recollection, is the time I came down—and in fact he wrote me a letter to come down and see him, and I came down, and he told me about the closet next door leaking through the wall and defacing the paper, and he told me to make a complaint, and I went and made a complaint.

Q. That is the only time you saw him personally while he was your tenant? A. I might have seen him two or three times, but I never spoke to him in regard to the situation, or anything else, and he never informed me anything.

Q. And you never had any talk with him about the ownership of the stable? A. No; I never did. After I went in to see
210 Mr. Goldberg—after I saw the fence on there—I went in to see Mr. Goldberg about it, and he happened to be out. Since then I did not go to him. I went to consult a lawyer.

Q. After the time Goldberg moved out did you buy any shelving from him in the stores? A. I did.

Q. Can you tell me about the date that you made the purchase? A. I think it was about a week or ten days before he moved away

from there, to the best of my recollection. I cannot tell exactly when it was.

Q. Did you say anything to him on that occasion about anything you heard about the stable or the property in the rear? A. No, sir; I did not say anything to him and he did not say anything to me about it.

Q. After you knew that the stable in the rear of 1247 was not included in your deed did you ever tell Isaac Roginski that you had bought the property cheap, anyhow? A. I never made any statement to Isaac Roginski.

Q. Did you ever make any statement of that kind to him that you bought this property cheap, anyhow? A. No, sir; I did not.

Q. Do you still own both of these pieces of property, 1245 and 1247? A. My wife owns them.

211 Q. She still owns them? A. Yes.

Q. Would you have purchased this property in reliance merely upon the representations of Goldberg and Rochold? A. I would.

Q. Without having had the plat and title examined and certified? A. I would, because I knew Mr. Goldberg for many years and I knew him to be a perfectly honest man, and I did not think he would do me any injustice or wrong.

Mr. FIELDS: Please note on the record that after the close of the cross-examination Mr. Simmons enters into close and private conversation with the witness and thereupon proceeds to his redirect examination.

Mr. SIMMONS: I concede I asked the witness a question in relation to the statement made to him by the person that was sent to the place for the purpose of renting this store, and asked him whether that was before the suit was filed or since.

Redirect examination.

By Mr. SIMMONS:

Q. State whether or not you tried to rent this property lately and what report was received, if any, by the persons sent there to rent it.

Mr. FIELDS: The latter part of the question calling for a report is objected to as being hearsay.

A. A man that keeps a cleaning and dyeing establishment
211½ southwest asked me what I would rent one of those houses for. I told him I did not care to rent one of the houses; and he says, "Well, you could not rent both of them together because Mr. Goldberg was telling me you would not be able to rent it on account of the yard being cut off."

Q. How long ago is that? A. He came to me about three or four weeks ago.

Mr. FIELDS: The latter part of the first answer of the witness is objected to as hearsay.

Q. Mr. Richold has spoken about a receipt that he gave you when you paid a deposit of $100 on this property. State whether or not he gave you such a receipt and whether you have it. A. I really could not remember whether he gave me a receipt or not. I cannot swear to that, because I don't remember; but I know I can produce the check I gave him as a deposit, and, to the best of my recollection, I don't think I had a receipt at all, but the check was written as a receipt itself. I think I can produce a check.

Mr. SIMMONS (to counsel for defendants): Do you want that produced?

Mr. FIELDS: No; I would like to see the receipt.

The WITNESS: I think there is written on it, in part payment of 1245 and 1247 11th street.

Mr. FIELDS: On page 19 of Mr. Shappirio's testimony the
212 stenographer used the words "Justice Scott," and it has been corrected to "Justice Cox" in the naturalization-papers matter.

JACOB I. SHAPPIRIO,
By J. A. SWEENEY,
Examiner in Chancery.

212½ Whereupon THOMAS F. GALLOWAY appeared for cross-examination.

By Mr. FIELDS:

Q. How long have you known Mr. Shappirio? A. Now, Mr. Fields, I cannot answer that definitely. I think about four or five years.

Q. How long have you been doing work for him? A. About three years.

Q. Has your father known him longer than you? A. No, sir.

Q. Did your father do any work for him before you? A. No, sir. I represented the firm. In fact, father never knew him until after I knew him.

Q. What kind of work have you done for Mr. Shappirio? A. Well, I did, you might say, repairs, and I remodeled the house, the one he lives in in Le Droit Park, and remodeled the house on 11th street southeast, and did work for him on D street, where he has a store, shelving, remodeling, &c., and also did all the work down on 11th street, where they have the tailoring shop, and in fact I am doing about $2,000 worth of remodeling for him. In fact, I have done all his work since I have known him, so far as I know. I did all the work of tinning and painting and plastering, and all kind of work that goes into a building—heating and
213 everything of that kind that goes into a building. I done nigh to $4,000 worth of work for him and the firm in the last twelve or thirteen months.

Q. Do you think there is any difficulty in getting out of the east door of the summer kitchen of premises 1247 11th street into the concrete yard there between the two buildings? A. Yes; I do.

Q. What is the obstacle? A. The obstacle is the cellar door. They are on an incline and the doors open right and left.

Q. Do you think they present much of an obstacle when the doors are closed? A. Not so much when they are closed, but they are the only ventilation and light they have, and naturally they would have to be opened.

By Mr. SIMMONS:

Q. Would they not simply be opened at night?

Mr. FIELDS: I object to that.

By Mr. FIELDS:

Q. Is the level of the cellar door above or below the level of the summer kitchen? A. They are above. They start at the bottom about level with the summer kitchen and go up. They are fashioned slanting down, and the average is considerably above the summer kitchen.

Q. About how far are the cellar doors from the east door
214 of the summer kitchen? A. Close to about two feet. I cannot state positively, but I think about three feet.

Q. Is there any difficulty in going from the concreted yard between the two buildings, 1245 and 1247, back to the alley through the stable of 1245? A. There is no difficulty, provided you pass through the east door. There is no fence between the two properties, but west of the west door then the fence comes in.

Q. About how wide is the passageway that goes out through the stable of 1245 to the alley? A. About three feet.

Q. And concreted, I believe? A. Brick.

Q. Is the areaway concreted or brick? A. Brick. The cellarway is brick cheeks with wooden doors on top.

Q. I am speaking of what might be called the L between the two buildings. A. That is paved.

Q. With what? A. With brick.

Q. Or concrete? A. Mostly brick. Some of the yard is just simply dirt—that is what we call the yard. We take in all inside the fences.

Q. Is all of the ground in the rear of the stables of 1245
215 and 1247 vacant ground clear over to 10th street? A. I think it is, so far as I can understand. There is a large excavation immediately in the rear of both houses, and that was supposed to be on the other side of the alley.

Q. Does the wall of the west line of the summer kitchen run as far to the west as the west wall of the back building? A. You mean the frame?

Q. Yes. A. No, sir.

Q. Now, how much further does the brick wall run? A. Well, I should think, to the best of my recollection, about one brick; about six inches, or something like that.

Q. About how much space is there between the brick wall and

this fence Goldberg put up there? A. I never measured. I think about twelve inches; along about twelve inches or one brick.

Q. What would be the width of a brick? A. Eight and three-quarter inches is a brick joint and all. That is ordinarily what we calculate.

Q. Can a person step out of the west door of the summer kitchen and go into the areaway? A. No, sir.

Q. Did you ever try it? A. I did try it once. I tried to
216 open the door and it came open a little bit. I don't think that I am large, but I could not get in.

Q. The two doors of the summer kitchen open inwardly? A. I think one opens outwardly.

Q. Which? A. I think the east door opens outwardly.

Q. And the west inwardly? A. Inwardly; but this is as near as I can remember—about twelve inches. I never made special examination.

Q. Did you ever try to go out of the west door of the kitchen into the passageway? A. I tried opening the door and looking out; that is all. I have men working down there and really didn't pay much attention.

Q. Is there any back yard at all to 1245? A. There is really no rear yard, because it is covered by the shed or stable.

Q. And that begins where the brick building stops? A. Yes. Of course there is a side yard; what we call an L.

By Mr. SIMMONS:

Q. How wide is the L? A. About three feet, as near as I can remember. That goes right past the kitchen door of 1245 to the door going into the stable of 1245. That is a single door, and then
217 there is a double door from that stable going out to the alley in the rear of 1245. The alley has a kind of offset in there.

Q. I suppose you never have been engaged in the real-estate business, have you? A. No, sir.

Q. Do you recollect that the window in the waste wall of the back building of 1247 is covered with iron bars? A. Yes; there are iron bars in it.

Q. Do you know whether or not the shutters could be closed with those iron bars on them? A. I am satisfied they cannot.

Q. Did you try to close them? A. No, sir; but I am satisfied they could not be closed.

Q. Are these shutters hung on hinges in the regular manner? A. Yes; L. & P. hinges.

Q. They could be easily lifted off and closed and put back? A. Yes, they could be closed; but the only way would be to take them off and rehang them.

Q. You could not spring them? A. No, sir.

By Mr. SIMMONS:

Q. These blinds could not be rehung without being re-opened? A. I don't understand you.

Q. What I mean is, could the blinds be hinged? A. Not unless they could pass at least very near at right angles to the
218 wall.

Q. In other words, they must be opened before they could be hung to the hinges? A. Yes; the blinds could not be hung unless they were at right angles to the wall. If they are anything else than at right angles you have got to remove the hinges and rehang them. Any blind cannot be hung unless it be at least at right angles. If it be that way (indicating) they strike the head of the window. It is the same way with the door.

By Mr. FIELDS:

Q. Where you construct a window and bar it as 1247 is barred, you do not hang shutters on it? A. Not in a new building, we do not, but if the old shutters are there we hang them on the inside; on the hanging stile, so we can close the shutters.

Q. How long have you been in your present business, Mr. Galloway? A. Since 1873.

Q. I suppose you have frequently testified as a witness. A. No, sir; I believe this is the only time I have ever been in a case in my life. I employ a lawyer to get me out of it; that is A. B. Duvall.

Q. What directions did Mr. Shappirio give you as to making repairs on these premises the day you and he went down there?
219 A. He never gave me any at all. He simply told me to look at it and any part of it that was necessary to be done to do it.

Q. Did you look it over and tell him what you thought was necessary? A. I did.

Q. And when did he give you the directions to make the repairs you did make? A. I went down twice. I went once last year, but most of it I made six weeks ago, but last year I fixed all the roofs and chimneys. This year I overhauled it thoroughly.

Q. Can you tell me when it was you went down with Mr. Shappirio the first time? A. I cannot tell you the exact date. To the best of my recollection, it was somewhere about August. It was very warm weather.

Q. You say at that time you did not receive any order to make any repairs? A. Simply to do what I thought was necessary at the present time, because I was occupied and Jake said he would not do anything unless he got a new tenancy, which he did this season, painting the place and plastering, and everything that was needed.

Q. Did you give him an estimate for it? A. I never have given him an estimate on any work I ever did for him.

220 Q. Have you since made the repairs which you found were necessary at that time? A. That question doesn't exactly cover the ground, I don't think. I made the necessary repairs last year to keep the building from being damaged through leaking. About eight weeks ago I sent the men down there to do the other repairs in the way of papering and things of that kind. You mean I made two jobs of it. As long as it was occupied I did not do any-

thing only extraordinary repairs, and this season I went through it all inside. That is the way I discovered the fence was down there. I found the fence when I went to make the repairs—that is, looking it over previously to making the repairs earlier in the season.

Q. Had you ever seen Ike Roginski before you went down there that day? A. No, sir; I never knew his name until today, and only place him by hearing the witnesses say it was Mr. Goldberg's brother-in-law.

Q. Do you think you would know him if you saw him again? A. I do.

Q. Are you quite sure? A. I think so. I don't forget a face, but I forget names very quick. I don't know whether it is the gentleman you are speaking of, but if it is I will identify him.

221 By Mr. SIMMONS:

Q. When you first went with Mr. Shappirio to look at this property, what did you go there for? A. The first time Jake asked me to go down there he said he was going to buy the property, or thought about buying it, and asked me to estimate what I thought was the value of it.

Q. And that is the first time you saw it? A. That is the first time I saw it. After that time I met Mr. Goldberg and this gentleman you call Ike Roginski.

By Mr. FIELDS:

Q. Mr. Galloway, did you hear Goldberg himself state anything about whether the stable and property in the rear of 1247 did or did not belong to him? A. Not positively; no, sir. He just simply said, Show the property; that is all I heard from that gentleman. I understood it was Mr. Goldberg's brother-in-law. I don't know anything positive about it.

Q. Do you remember where Goldberg was when you and Shappirio came back from the rear of the property? A. We did not come back from the rear of the property.

Q. Well, I mean when you went out in the alley. A. He was standing in the west door of 1247, what I call the summer kitchen.

Q. Was he standing there when you came back or when you went out? A. He was standing there when we passed back
222 through the shed or stable, but not when we went through the house. You see, we came back to 1245 and came back through 1247 through the archway.

Q. Do you identify this gentleman who just came in as the individual who showed you through the property (indicating Louis Roginski)?

Mr. SIMMONS: I object to this question on the ground it is entirely incompetent and immaterial, and because the witness has testified that the man who pointed out the property was directed to point it out by Mr. Goldberg, and that he did not know his name, and whether this is the same man or not is immaterial.

A. Settle it amongst yourselves.

Q. The question is propounded to you. A. (Looking at said party.) It don't look like the gentleman. If it is he has shaved himself or something.

Q. Did the other man have a mustache? A. He don't look like the man to me; no, sir. He does not look like the man.

Q. Do you know what the difference is? A. He was a stout, heavy-built gentleman, about the same build as this gentleman, but he don't look to me as tall as that, and the face don't seem to be familiar at all. He is not the gentleman at all. I never forget a face. I will pick him out among a thousand, the man I saw. The man I saw was not as tall as I am, but heavier built, and the
223 face is altogether different. I don't know I ever saw this gentleman before.

Q. Now, let me ask you this: It is stated that Roginski went out in the back part of this property. A. Not that fellow.

Q. Well, say Isaac Roginski. A. I won't swear to any names at all.

Q. Well, say some individual went out into the back part of the property with you and Mr. Shappirio and showed you about there, and when you got through with your examination you came back. A. We came back through 1245.

Q. Tell me, when you came back, whether Mr. Goldberg was still standing in the west door of the summer kitchen. A. Now, Mr. Fields, allow me to ask a question here: When we came back into 1247 or when we came back to the yard?

Q. When you came back through the yard. A. He was still standing as we passed into 1245.

Q. Did you come into 1245 from the alley? A. Yes; to the best of my recollection, we came into the stable of 1245 from the alley, from the stable into the yard, and from there into the kitchen door and down in 1245 and through the archway of 1247.

Q. And went through the back part of 1245 first? A. We went through 1247, through 1247, through the stable of 1247 into the alley of 47, back through the stable of 1245 into the side yard or alley,
224 then to the kitchen, then upstairs and down again and th-ough the archway of 1247 again. We made a regular survey, you might call it.

Q. Was the stable door of 1245 locked at the time? A. I don't know, sir. I cannot tell you. Not after we got access to it through the outside doors.

Q. From the alley? A. Yes.

Q. Did you notice how the stable door was locked? A. I don't believe it had any lock on it at all. It was simply a kind of a door with something that held it secure, a little hasp.

Mr. FIELDS: On page 38 of Mr. Galloway's testimony in the last answer, the testimony beginning with the words "He asked me" and ending with the words "in good order," I object to as hearsay. On page 39, the testimony beginning with the words "look out"

and ending with the words "keep a horse," I object to as hearsay, and on the same page the testimony beginning with the words "The frame stable" and ending with the words "that kind in" I object to also as hearsay.

On page 41, the testimony beginning with the words "look out" and ending with the words "bite you" I object to as hearsay, and the following questions on page 41 I object to as leading: First,

225 "Look at that part of the photograph that is marked in read ink 'stable,' and state whether that is the place you went into;" second, "That small summer kitchen, is that the little house?" To the testimony on page 41 beginning with the words "would make" and ending with the words "the premises" I object *to* as hearsay.

To the following questions on page 42 I object *to* as leading: First, "On the north and east side;" second, "Damage done to the property," and — the testimony of the witness on page 42 as to his opinion as to the damage done to the property I object on the ground that it calls for a mere opinion from a non-expert, and as incompetent, irrelevant, and immaterial. This objection covers the testimony on page 42 beginning with the fifth question on that page.

To the question on page 43, "That read line is the new fence," I object as leading.

To the testimony on page 44 beginning with the words "it ran" and ending with the words "the square" I object *to* as hearsay. To the question on page 44, "Was he there when you returned, coming back?" I object as leading.

To the following questions on page 45 I object as leading: First, "Does that red line indicate the new fence;" second, "From the small summer kitchen as indicated there;" third, "The two yards were practically one;" fourth, "Now, look at this photograph marked Exhibit C to the bill, and state whether or not you recognize that as being the back yard of the premises 1247."

226 & 227 Mr. SIMMONS: The attorney for the complainants gives notice that he will insist that the objections to the testimony comes too late, and that many of the answers which the attorney for the defendants objects to as being hearsay are part of the *res gestæ*. Counsel for complainants having only reserved the right to introduce testimony to show the signature to the permit produced was that of the defendant George Goldberg, and it having been admitted that such signature was the signature of the defendant Goldberg, he now announces that his testimony-in-chief is closed.

THOS. F. GALLOWAY,
By J. A. SWEENEY,
Examiner in Chancery.

* * * * * * *

228 Also appeared LEWIS A. ROGINSKI, a witness produced in the same behalf, —, being first duly sworn, testified as follows:

Direct examination.

By Mr. FIELDS:

Q. Please state your name, residence, and occupation. A. Lewis A. Roginski; occupation, sign painter, and now in the theatrical business; residence, New York city.

Q. Do you know Jacob I. Shappirio? A. Yes.

Q. How long have you known him? A. About fifteen or sixteen years.

Q. Are you acquainted with the property 1245 and 1247 11th street southeast? A. Yes.

Q. For how long? A. Since 1884 or '5.

229 Q. Did you ever know a man by the name of Cohen? A. Yes; we did quite a job of sign-work for him when he took possession of the store 1247 11th street.

Q. What business was he carrying on? A. Clothing and general merchandise.

Q. Did you ever see Mr. Shappirio there? A. Yes; he was clerk there.

Q. Did you know where Shappirio lived at that time? A. Yes; he lived in the house, I think.

Q. How long have you known George Goldberg, the defendant? A. Ever since he came to this country in 1873.

Q. Are you related to his wife? A. She is my sister.

Q. When did your sister marry Goldberg? A. I think it was five or six years ago.

Q. Prior to her marriage did she do any work? A. She worked for Lansburg and Charles Baum.

Q. In what capacity? A. Clerk.

Q. Where did your sister live during that time? A. She lived at our house with my mother and kept house.

Q. Was she under any expense for her living? A. None as I know of except little knick-nacks she would get herself.

Q. Do you know whether or not she saved any of her earnings? A. I think she did.

Q. Do you know whether she did or not? A. I am positive of it, sir.

230 Q. Do you know whether or not she had any of her earnings saved at the time she married Goldberg? A. I think she had something like six or seven hundred dollars.

Q. Are you acquainted with the strip of ground with the shed on it in the rear of 1247 11th street S. E.? A. Yes.

Q. Do you know whether your sister bought that strip of ground from Mr. Darby?

Mr. SIMMONS: I object to that question on the ground it is incompetent unless he states how he knows. Ask him how he knows.

The WITNESS: When I returned from Texas last November, the latter part, she told me.

Mr. SIMMONS: I object to that as hearsay evidence.

A. Shall I answer the question?

Q. Go ahead. A. She told me Mr. Goldberg sold the property, and that she had purchased the strip of ground in the rear of that property.

Q. Did she state why she had purchased that strip of ground?

Mr. SIMMONS: I object to that on the ground it is incompetent, immaterial, and hearsay testimony.

A. Yes.

Q. What reason did she give? A. She told me there was a piece of ground which was to be sold facing the 11th Street front part, and she bought that piece of ground for the sake of having an entrance, and that she was thinking of buying the piece on 11th street.

Q. Do you mean 11th street or N street?

231 Mr. SIMMONS: I object to that. Mr. Fields is calling the witness' attention to the fact that he is making a mistake. I will permit you to write down what you want him to swear to.

A. She told me lot 2. Now, what square it is I don't know. I never paid much attention to it. I know she told me it was lot 2.

Q. So far as you know, did her purchase have any relation to 1247 11th street? A. No, sir.

Q. Do you know upon which street lot 2, in square 977, fronts? A. I cannot say, sir.

Q. Between what lettered streets are premises 1245 and 1247 11th street southeast?

Mr. SIMMONS: I object to that on the ground it is incompetent.

A. Between M and N streets.

Q. Are there any buildings on the north side of N street between 10th and 11th streets southeast? A. Yes.

Q. Is this strip of ground in the rear of 1247 also in the rear of any property which fronts on N street southeast? A. Yes; it is in the rear of the N Street property.

Q. Did this strip of ground ever belong to premises 1247 11th street? A. Not as I know of.

Q. What use has been made of the shed on this strip of ground since Mr. Goldberg moved out of this property? A. For storage purposes.

Q. What use is being made of it at the present time? A.

232 Storage purposes.

Q. Who constructed the new fence around this strip of ground? A. I did.

Q. By whose direction? A. My sister's.

Q. Did Goldberg have anything to do with the matter? A. No, sir. I purchased the lumber for it. She gave me the money and I purchased the lumber and put it up.

Cross-examination.

By Mr. SIMMONS:

Q. Mr. Roginski, how old are you? A. I am close on to forty.

Q. How long have you been living in Washington? A. I have been living in Washington since 1873 with the exception of three and a half years.

Q. Are you married? A. No, sir.

Q. Have you ever been married? A. No, sir.

Q. Where was your home when you lived in Washington? A. At different places, sir; 908 D street, 13th street between E and F, 6th street between T and U, and on 1st street between D and E.

Q. Did you live home with your mother? A. Yes: I was the one who kept the house up.

Q. You ran the house yourself? A. Yes; I was one who paid the expenses for everything.

Q. You paid the expenses for everything? A. Yes.

233 Q. How old was your sister when you first came to Washington? A. She was about three years.

Q. About three years old? A. Yes.

Q. And that was in 1873? A. Yes.

Q. Then, she would be how old now, about? That would take off about twenty-eight years? A. About twenty-eight years.

Q. She is about twenty-eight years old now? A. Yes.

Q. And when she married Mr. Goldberg, taking off five years, it would make her about twenty-three years old, then, when she married him? A. About that.

Q. You say she was employed by Baum. When did she go to work for Baum? A. I cannot remember the date, but she worked for Baum and Lansburg about five or six years altogether in both places.

Q. Five or six years in both places? A. Yes.

Q. What did she do when she was there? A. She was clerking.

Q. In 1873 you came to the city? A. Yes.

Q. And she was then about three years old? A. About that. I don't know what year she was born in.

Q. When she was about three years old? A. As near as I know. Her mother was the one that can know more about it.

234 Q. That would make her about thirty years old about now? A. Thirty or thirty-one.

Q. And she married Mr. Goldberg in 1896? A. I think she did. I am not positive.

Q. Is it not a fact she married him several years prior to that? A. Several years prior to what?

Q. Several years prior to 1896. A. No, sir.

Q. Do you know when she married him? A. Of course I do.

Q. When was it? A. About five years ago.

Q. Then, she was about twenty-five years of age when she married Mr. Goldberg? A. About that.

Q. You say she worked in Baum's and Lansburg's about seven years? A. About that.

Q. What salary did she get? A. I don't know.
Q. You don't know what salary she got? A. No, sir.
Q. Did she pay any board to you whatever? A. No, sir; she had no occasion to do so.
Q. Did you purchase her clothing for her? A. Yes.
Q. You purchased everything for her? A. Yes.
Q. She did not have to spend any money at all? A. No, sir.
235 Q. In what way did you purchase her clothing? A. By giving her the money.
Q. You gave her the money? A. Yes.
Q. How often? A. As often as she required it.
Q. You say you were sign-painting yourself? A. Yes.
Q. How much did you make? A. That is a personal question, sir, and I decline to answer it.
Q. How much did you give her altogether? A. I never kept any record of it.
Q. Did you give her one hundred dollars? A. I cannot say whether I gave her one hundred dollars or two or three. I gave it to her when she wanted it. She could always get money when she wanted it from me.
Q. Where did you live when you first came here, what house? A. I think it was on Seventh street northwest, as near as I can remember.
Q. And you are forty years old now? A. About that.
Q. And when you came here you were thirteen? A. Yes.
Q. And when did you go in business? A. I went into business when I was nineteen.
Q. Had you a partner? A. Yes.
Q. Who was your partner? A. My brother-in-law, Solomon Lewis.
236 Q. He married one of your sisters? A. Yes.
Q. Did she live with the family at the same time? A. She did for some years.
Q. And when did she marry Mr. Lewis? A. I don't remember. That has been too many years ago.
Q. Is she as old as that? A. Yes.
Q. Is she older than you are? A. Yes.
Q. How many others were in the family? A. After married life it started from one and went up to about four.
Q. At the time Mr. Goldberg married your sister, how many were in the family then? A. My mother and my sister and brother.
Q. Where did you live at that time? A. When Mr. Goldberg married my sister?
Q. Yes. A. On First street northwest.
Q. First street is a pretty long street. A. Between D and E streets.
Q. How much rent did you have to pay there? A. $30 a month.
Q. What were your entire household expenses at the time your sister was living with you? A. Now, Mr. Simmons, you are going into personal matters.

Q. Mr. Roginski, you put yourself into a personal matter, and I have to ask you. A. From time to time I gave the money to my sister just as she wanted it. She was not working then when
237 we were living on 1st street, if that is what you have reference to.

Q. How long had it been? A. Two years since she had been working.

Q. Two years since she did any work? A. Yes.

Q. From whom did you rent the house then? A. Which house?

Q. The last house. A. I rented it from Robert Cohen.

Q. He was the owner? A. I think he was.

Q. Who did you rent from before? A. Leipold.

Q. Now, how many were in the family when you first went into business? A. There was my mother, my two sisters, my brother-in-law, and myself.

Q. Who rented the house then; did you do it? A. Well, the way I had been working then I supported the whole business, because I was the mechanic of the firm.

Q. And you gave your sister money to buy clothing whenever she wanted it? A. Whenever she wanted it.

Q. Notwithstanding the fact she was earning money herself? A. She was not earning money then.

Q. When did she start to work for Baum? A. When she was old enough to work.

Q. When was that? A. I don't know that. You will
238 have to ask her that question.

Q. Do you mean to say that every dress and everything she wore was purchased for her? A. Yes.

Q. And she did not buy anything herself? A. Not that I know of.

Q. Where did she put her money? A. I don't know.

Q. Did you ever see her have any money? A. Why, sure.

Q. How much did you see her have? A. I don't know.

Q. You are in the theatrical business now? A. Yes.

Q. Where does Mrs. Goldberg live now? A. 600 H street northeast.

Q. That is two miles from this place, isn't it? A. I don't know; I cannot tell you. I haven't measured it.

Q. About how far is it? A. I cannot tell you. I suppose they call fifteen or twelve blocks to a mile. I never walked any ties.

Q. Did Mrs. Goldberg own any property in this square? A. Which square?

Q. This square where this little piece of property is—at the time she bought it? A. I don't know.

Q. Did she ever buy any property before this? A. No, sir; not that I know of.

Q. When did you come back to the city? A. The latter part of November, last year.

239 Q. She told you then she bought this property? A. Yes.

Q. Why did she tell you that? A. Well, now, I don't know what reason she had to tell me. She said she bought a piece of property. I never probed for any information.

Q. She told you Mr. Goldberg had sold the front piece? A. Yes.
Q. And she bought the piece in the back? A. Yes.
Q. When did you build the fence? A. I don't know what day. I built it, I think, a day or two before *me* moved or after he moved —it was before he moved.
Q. A day or two before he moved? A. Yes.
Q. At what time did you build it? A. I didn't notice the watch at that time.
Q. You know what I mean. I asked you what time you built it—whether it was in the morning or afternoon? A. I don't recollect, sir.
Q. Was it on Sunday? A. Yes; it was on Sunday.
Q. You built it on Sunday? A. Yes.
Q. Why did you build it on Sunday? A. That was the only time I had.
Q. Who helped you to build it? A. A brother of mine.
Q. What is his name? A. Isaac Roginski.
Q. What part did you take in building this fence? A.
240 Driving nails and sawing boards.
Q. You did that? A. Yes.
Q. About how long did it take you to do it? A. About a half hour or three-quarters.
Q. You got through pretty quick, did you? A. Yes.
Q. Did you ever look at a plat of this square? A. I looked at the surveyor's plat.
Q. When? A. When I built the fence.
Q. On Sunday? A. Yes.
Q. What do you mean by the surveyor's plat? A. I looked at the pegs where he put them there.
Q. The pegs in the yard? A. Yes.
Q. Where does lot 1 in this square face? A. I don't know, sir.
Q. Don't you know that it is a fact that lot 2 faces on 11th street? A. I don't know anything about that, sir.
Q. You don't know anything about it? A. No, sir.

Mr. FIELDS: That is manifestly a catch question.

Q. What did you put in this shed when you build the fence around it? A. I put nothing in it.
Q. You simply built the fence? A. Yes; the shed had stuff in it already.
Q. What did they do with the dog they had there? A. I
241 don't know anything about that.
Q. You didn't see any dog? A. I did not.
Q. They have a dog? A. I don't know anything about the dog.
Q. What did your sister say to you when she asked you to build the fence? A. She simply told me to put the fence around this yard, to protect that shed and prevent anybody from getting in it.
Q. So that that was good protection. You could not lock the door, could you? A. Yes; the door is locked now.
Q. I want to know the very words she said, if you can remember

them, when she asked you to build this fence. A. I cannot repeat them, because I don't know.

Q. Who gave you the money to do it? A. She did.

Q. How much was it? A. About two and a half or three dollars, I think, the lumber amounted to.

Q. Did you buy the nails and boards yourself? A. I did not buy any nails. We had the nails.

Q. Where did you get those? A. There are plenty of nails around the store always.

Q. Where did you get the boards? A. Across the way; I think it is Campbell's.

Q. Did you buy them on Sunday? A. No, sir.

Q. When did you buy them? A. Three or four days before that.

242 Q. You waited until they were ready to go out before you put the fence up? A. Yes; to prevent anybody from getting in the front way.

Q. How long have you known Mr. Goldberg? A. I have answered that question; since he came to this country in 1873.

Q. You visited the house of your sister right along, didn't you? A. Which house?

Q. Where they lived on 11th street. A. I visited my sister?

Q. Yes. A. My sister lived in that house.

Q. You went to visit your sister? A. Yes.

Q. How often? A. I don't know; two or three times a week since I came back.

Q. Before you came back how often did you see her? A. I was not long in Washington after they were married.

Q. How many times did you see her after they were married before you came back this last time? A. On an average of two or three times a week.

Q. Did you stay there all night? A. No, sir.

Q. You simply went there to see her? A. Not exactly. My mother lived there.

Q. Your mother lived there? A. Yes.

Q. What use did they make of this piece of property you fenced off during all this time? A. I don't know.

243 Q. You did not see it at all? A. I never had occasion to go out.

Q. You never went out into the yard? A. No, sir; my company was always in the parlor.

Q. Now, you say you have known Mr. Shappirio fifteen or sixteen years? A. About that.

Q. When did you first know him? A. I said about fifteen or sixteen years ago.

Q. What do you mean? A. When he first landed here.

Q. How came you to know him then; were you introduced to him? A. There was no introduction among the D Street merchants. Everybody knows everybody else.

Q. How did you come to know him? A. He came in the shop the same as the rest of the people.

Q. You say Cohen lived there and kept a store in 1885? A. About that. I cannot state the exact date or year.

Q. What was it? This same store? A. Yes; 1247. That was the north building and we signed it up.

Q. How long were you putting up the signs? A. About one and a half days; and then I lettered a piece of fence that enclosed 1245 for Mr. Cohen. There was some description of it, with an index finger pointing to the store.

Q. That was the side yard fronting on 11th street? A.
244 That was enclosed, that piece of lot which is now 1245. Yes; there was a gateway that led into the house 1247 at the time.

Q. How often did you see Mr. Shappirio there? A. Well, now, I don't know how often I saw him, but I know he clerked there for quite a while.

Q. How do you know it? A. Because I know it.

Q. You never saw him but once in your life? A. We used to see him on D street time and time again on Sundays.

Q. D street northwest? A. Yes; between 9th and 10th.

Q. You saw him on Sundays? A. Yes; on Sundays.

Q. Was he at your shop on Sundays? A. Sometimes he would come in, and sometimes he would not.

Q. How often did you see him at this place—1247 11th street? A. I had occasion to see him several times when I was doing work for A. D. Kaufman. He kept the place a few doors above that, and I did a lot of work for him from time to time.

Q. When was that? A. About the same year.

Q. About 1885? A. I don't remember the exact year.

Q. But it was about 1884 or '5 when Mr. Shappirio was clerking there? A. Yes.

245 Q. How do you know it was Mr. Shappirio? A. I don't think his face has changed any. He has the same face.

Q. That has been fifteen years ago? A. Yes.

Q. And you say he looks just the same now as he did then? A. He might be a little fatter and a little more civilized, and so on. I have looked the way I have for the last twenty years with no change.

Q. What was he doing there when you saw him? A. I never probed into his private affairs. I know he was a clerk, that was all.

Q. And you mean to say you saw him there more than once? A. Yes.

Q. How often did you see him there? A. I believe I stated that. I had occasion to do some work for Kaufman, and I saw him on several occasions.

Q. What do you mean by several? A. Half a dozen or a dozen times; I don't know exactly.

Q. Within what space of time? A. Within three or four months, I guess.

Q. That was in 1885? A. Along about there. I don't know the date, but it was along there somewhere—1884 or '5.

Q. You say that that shed was used for storage. How do you know that? A. My eyes told me that.

Q. You saw the stuff in there when you built the fence?
246 A. Yes.

Q. Did you see it there before? A. Well, now, I never went into it before, until I started to build the fence.

Q. You never had been in the back yard until you started to build the fence? A. I had been in the back yard, but I never had been in the shed.

Q. How often had you been in the yard? A. Perhaps a half dozen or a dozen times.

Q. When? A. Right after Mr. Goldberg took possession, and when I returned I went down there.

Q. And it was used then as a back yard to 1247? A. I suppose so.

Q. Look at that photograph I now show you, marked Exhibit C to the complainants' bill, and tell me if that is a photograph of the fence you built around there. A. If that is a photograph, it is.

Q. Do you recognize the shed. A. There is no shed there, sir.

Q. Do you recognize the small summer kitchen? A. Yes.

Q. And you recognize the fence? A. I recognize this part (indicating); I put that up.

Q. Now look at this one, marked Complainants' Exhibit E, and see if you recognize that as the back yard, where you built the
246½ fence around (showing photograph). A. Yes.

Q. And this is the fence you built (indicating)? A. Yes.

Q. And that is the woodshed where you claim the goods are stored? A. Yes.

Q. Is that a tin roof? A. I don't know; I never examined it.

Redirect examination.

By Mr. FIELDS:

Q. How long were you engaged in the sign-painting business in this city? A. About nineteen years.

Q. Did you have a partner? A. I had a partner for twelve years.

Q. Who was that? A. Solomon Lewis.

Q. What was the firm name? A. Roginski and Lewis.

Q. Where was the place of business? A. 908 D street northwest.

It is agreed that the examiner may sign the deposition of this witness.

LEWIS A. ROGINSKI,
By J. A. SWEENEY, *Examiner.*

247 Mr. FIELDS: I offer in evidence a letter from Jacob Shappirio to the defendant George Goldberg, dated January 17th, 1901, to be marked Exhibit *Exhibit* Defendants No. 12.

It is agreed and admitted by the complainant Jacob Shappirio

that this is an original letter written by Jacob Shappirio, complainant, to the defendant George Goldberg.

Whereupon an adjournment was taken to meet on Wednesday, September 11th, 1901, at 1 o'clock p. m.

JOHN A. SWEENEY, *Examiner.*

248 WEDNESDAY, *September 11th*, 1901.

* * * * * * *

BENJAMIN W. GUY, a witness produced on behalf of defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. FIELDS:

Q. Please state your name and residence. A. Banjamin W. Guy; residence, 308 5th street southeast, Washington, D. C.

Q. What is your occupation? A. I am a wholesale merchant.

Q. Of what firm? A. Of the firm of Guy, Curren & Company.

Q. Where is your place of business? A. 313–'15–'17 9th street N. W.

Q. Are you acquainted with Jacob I. Shappirio? A. I don't know Mr. Shappirio—that is, I don't identify him. I know several people who keep stores on D street, and I know one is named Shappirio, but I don't know which it is.

Q. Do you know Mary Shappirio, the wife of a man named
249 Jacob I. Shappirio? A. No, sir.

Q. Are you acquainted with Leopold Richold, a real-estate agent? A. Yes.

Q. Mr. Guy, Jacob I. Shappirio has testified in this suit, on page 17 of the record, that Mr. Richold told him that Mr. Goldberg had sent you to him, Richold, to ask him, Richold, whether he, Shappirio, would not sell the property involved in this suit, being premises No. 1245 and '7 11th street southeast, and a strip of ground in the rear of 1247. What have you to say as to that statement?

Mr. SIMMONS: I object to that question on the ground it is leading.

A. I don't know what Richold told Shappirio. He might have told him I wanted to buy the Capitol or Mr. Richold wanted to buy the Capitol.

Q. Did Mr. Goldberg ever send you to Mr. Richold regarding this property? A. No, sir; he never mentioned this property to me one way or the other.

Q. Did you ever go to Mr. Richold about this property? A. No, sir.

Q. Did you ever have any talk with Mr. Goldberg about the property? A. No, sir; except about a week or ten days ago when Mr. Goldberg asked me if he had ever had any conversation
250 with me about it, and I told him no. I don't think that was more than a week ago.

Q. Is that the time Mr. Goldberg spoke to you about testifying? A. Yes.

Cross-examination.

By Mr. SIMMONS:

Q. Is there any other person by the name of Guy in your firm? A. No, sir.

Q. Where is your place of business? A. 313–'15–'17 9th street northwest.

Q. Do you know Stein & Company, the tailors on 11th street? A. In a general way I know there is such a firm.

Q. Don't they deal with you? A. They have no account with us. They might have bought some goods for cash. I cannot tell that.

Q. Do you mean to say you never talked with these parties around Stein & Company's place in relation to this matter? A. I have no recollection of ever having talked to any of them.

Q. Did you ever talk with Mr. Richold? A. Yes.

251 Q. What was it about? A. Mr. Richold came in there to sell several pieces of property. He has been in there and I talked with Richold about most everything he had for sale.

Q. You knew about this property at the time? A. The only thing I knew was that Mr. Goldberg had transferred it to Shappirio, and I knew that only by the Court Record, by seeing it there.

Q. When did you know that? A. Whenever it was published in the Court Record.

Q. That was right after the sale? A. Yes; whenever that was. I don't remember.

Q. Now, you say you never talked with Mr. Richold about this property? A. Oh, no; I didn't say that. I said I thought I have talked with Richold about it. I think Richold offered to sell it to me.

Q. You said you never went to Richold about this property? A. I did. He came to me.

Q. Now, when was that, after the sale or before? A. I think it was after the sale.

Q. What did you say to Mr. Richold about it? A. I cannot tell you. I might have asked him what Shappirio wanted for it, possibly, or he may have told me what he wanted for it. You know, when a real-estate man talks to you about real estate you don't remember what you say to him, but Mr. Goldberg never said

252 a word to me about the property in his life one way or the other until about a week ago. He asked me what I could testify to in the matter as to any conversation he had with me.

Q. How long have you known Mr. Goldberg? A. I should say ten years.

Q. You say you were advised that the property was for sale before it was sold? A. No; I didn't know it was for sale at all until Mr. Richold—I knew it had been sold because I saw it in the Court Record.

Q. Why would you notice this particular property in the Court Record? A. Mr. Goldberg is a customer of ours, and it is our custom to keep a record of the transactions of our customers.

Q. How often did you visit Mr. Goldberg or his store? A. I don't think I ever have been in his store in my life.

Q. How often has he been to your place? A. Possibly once in two or three months or three or four months.

Q. Once in three or four months; not more than that? A. About once in three or four months.

Q. That is during the ten years you knew him? A. Yes.

253 Q. You mean to say he came once in every three or four months? A. Yes; possibly oftener.

Q. In all that time didn't you talk to him about this property at all? A. Never in my life.

Q. How did you know he owned it? A. It is our business when we do a credit business to know something about our customers' affairs.

Q. And you look it up to find whether he owned it or not? A. I don't know how I came by that information, but I did not come by it through Mr. Goldberg, I know.

Q. How could you have gotten that information without either examining the records or sending somebody to look it up or asking Mr. Goldberg? A. I could have gotten it through the mercantile agencies. I probably have a report in my office as to his property.

Q. And you never talked to him about the property at all? A. Never in my life. I never knew anything about the property except it was in his name and he transferred it to Shappirio.

Q. Had you any talk with Richold about this property? A. Richold came into the store and offered me that piece of property and probably two or three others. He tried to sell me twenty pieces.

254 Q. That was before the sale to Shappirio? A. No; I think that was after.

Q. What did he ask you for it? A. I don't remember that even.

Q. You say you think it was after. Do you mean to say Mr. Richold came to your place and offered to sell you this property after it had been sold to Shappirio? A. That is my recollection; yes.

Q. What time was that? A. I really don't know. It might have been last fall. It was during the winter; possibly between November and March.

Q. When did you first learn of this difficulty between these two people? A. About a week ago.

Q. And you never heard of it before? A. I didn't know there was any difficulty between them. I say a week; probably it is two weeks. I did not charge my mind with things that don't concern me. It did concern me as to whether Mr. Goldberg had the property in his name, possibly, because Mr. Goldberg was liable to come in and buy five hundred or a thousand dollars worth of goods, and I would want to know whether he could or not.

Q. When did you see Mr. Goldberg after noticing this sale? A. I cannot tell you. I have seen him soon——

255 Q. Soon after noticing this sale? Was it before he came to your place or did you see him before? A. I cannot tell you that. I cannot tell you what time any one of my customers came in my store. Our business is done with Mr. Goldberg largely by drummers. I did not come in contact with Mr. Goldberg much *unless he happened* to come into the store.

Q. Are you positive you talked with Mr. Richold about this matter subsequent to the sale or prior? A. After the sale.

Q. You talked with him after the sale? A. I am quite sure it was after.

Q. You did not talk with him before the sale? A. I have no recollection of it. It was probably about the time it was transferred.

Q. What did he offer you the property for? A. I don't remember. Possibly we had some bantering about the price, but I could not say what it was now.

Q. Did you say you wanted it? A. He said Shappirio owned it, possibly, which I knew. I don't know that he said that. It was a casual conversation.

Q. As a matter of fact, you don't know what you said about this matter. It was a casual conversation, and you don't remember what you did say? A. As a matter of fact, I could not have

256 said to Mr. Richold an untruth.

Q. Never mind what you could have done. As a matter of fact, is it not true that you paid very little attention to what you did say? A. As to the exact amount he asked for it I did not pay much attention, because I was not much interested in it.

Q. You seemed to follow it up pretty well. A. I was not interested in buying it. I knew he transferred it.

Q. What is the object of hunting up property of this kind to see what people own? A. As a basis of credit.

Q. What do you do when you find people transferring property? Does that diminish their credit? A. Yes.

Q. What did you say to Mr. Goldberg? A. Not a word.

Q. You kept on crediting him? A. Certainly, because Mr. Goldberg's account was small and his dealings with us had been always very honorable.

Q. And you did not ask Mr. Richold what he would take for this property? A. I cannot say I did not.

Q. You cannot say you did not? A. No.

257 Q. Is it possible you did? A. It is a possibility I did ask him why he sold the property and why Goldberg sold it. I might have asked him, but I never asked Goldberg that.

Q. Is it not possible you did ask Richold what Shappirio would sell it for? A. It is possible.

Redirect examination.

By Mr. FIELDS:

Q. Did you ever have any conversation with Richold about this property at the request or instance of Mr. Goldberg? A. No, sir.

Recross-examination.

By Mr. SIMMONS:

Q. Did you ever have any conversation with him at the request of anybody else? A. No, sir.

Q. Did you ever talk to anybody else about this property other than Mr. Richold and Mr. Goldberg? A. I don't remember having done so.

Q. Run back in your mind and see if you don't remember talking with Roginski? A. No.

258 Q. You are positive you did not talk with any one except Mr. Richold? A. My partner and I may have discussed it somewhat, but I don't remember that we did.

Q. I mean some one outside of your firm. A. No.

BENJ. W. GUY,
By J. A. SWEENEY,
Examiner in Chancery.

259 At the same time and place also appeared SOLOMON LEWIS, a witness produced in the same behalf, —, being first duly sworn, testified as follows:

Direct examination.

By Mr. FIELDS:

Q. Please state your name and residence. A. Solomon Lewis; residence, 110 E street northwest.

Q. Mr. Lewis, are you acquainted with the complainants in this suit, Jacob I. Shappirio and Mary Shappirio, his wife? A. Yes.

Q. How long have you known them? A. I cannot state definitely, but for at least sixteen or eighteen years—that is, with Mr. Shappirio; not so long with Mrs. Shappirio.

Q. Are you acquainted with the defendants, George Goldberg and Minnie D. Goldberg, his wife? A. Yes.

Q. How long have you known them? A. For about twenty-five years.

Q. What is your occupation? A. Conducting a sign-painting establishment.

Q. Do you know Lewis Roginski? A. Yes.

Q. Did you ever have any business relations with him? A. Yes.

260 Q. What were they? A. We were partners.

Q. In what business? A. In the sign-painting business.

Q. What was the firm name? A. Roginski & Lewis.

Q. How long did that firm last? A. It lasted from about 1880 to about 1894 or 1895, possibly. I am not positive.

Q. Where was the place of business? A. We were first located at the corner of 11th and F, where W. B. Moses & Sons are now, and subsequently we moved to my present property, 908 D street N. W.

Q. How long have you known the defendant Minnie D. Goldberg? A. Ever since she was a little child; ever since I came to this city.

Q. What relation was she to Louis Roginski? A. Sister.

Q. Are you in any manner related to her or George Goldberg? A. Yes.

Q. How? A. I am married to her sister.

Q. Before Minnie D. Goldberg married George Goldberg do you know whether or not she ever worked in this city?

Mr. SIMMONS: I object to this question on the ground it is
261 leading.

A. Yes.

Q. Where did she work? A. She went to work, I think, in Charles Baum's and subsequently she went to work for Lansburg & Brothers.

Q. Now, how long did she work altogether before her marriage? A. I cannot state definitely.

Q. Give your best judgment. A. I presume she worked there from eight to ten years.

Q. Do you know how old she was when she began to work? A. Immediately upon stopping school.

Q. About how old was she then? A. She was then a child, about sixteen or possibly seventeen years.

Q. What were her duties in these places? A. Saleslady.

Q. Do you know what compensation she received? A. I do not.

Q. Where was she living during the time she was working? A. With her mother and brothers.

Q. Do you know who supported her while she was working? A. Yes.

Q. Who? A. Her brother.

Q. Do you know whether she was under any expense at all for her clothing and living expenses while she was working?
262 A. Not to my knowledge.

Q. Did her brother furnish her wearing apparel during that time? A. Yes.

Q. Of what character? A. Silks—I don't mean that——

Mr. SIMMONS (to the examiner): Put that down.

The WITNESS (continuing): I did not mean to give that as an answer at all, but as a joke. He furnished her with the usual wearing apparel, such as became a young lady of her age and position.

Q. Who was the head of the house during the time she was working? A. Mr. Roginski.

Q. How often did you visit Roginski's home? A. Until we dissolved we were constantly together, because they lived in the same building where our business was, and I used to be in the house there, at the shop or office, all the time—that is, during the day—but since we have dissolved I haven't been there so much.

Q. From your knowledge and observation was Minnie D. Goldberg extravagant?

Mr. SIMMONS: I object to that question on the ground that it does not call for any answer that is within the knowledge of the witness.

A. No, sir.

263 Cross-examination.

By Mr. SIMMONS:

Q. Mr. Lewis, what is your nationality? A. Russian.

Q. How long have you been in this country? A. About twenty-seven years.

Q. How old are you now? A. I am forty-five.

Q. You are a sign-painter by trade? A. No, sir.

Q. What is your business? A. Sign-painting.

Q. You don't do the work yourself? A. No, sir.

Q. What did you do before you left Russia? A. I went to school.

Q. You left there when you were a boy? A. Yes.

Q. How old were you? A. Sixteen.

Q. Did you come direct here from there? A. No, sir.

Q. Where did you go? A. To Liverpool.

Q. How long did you stay there? A. A year.

264 Q. And then you came here? A. Then I landed in New York, prowled about a little, and then came here.

Q. When did you first meet Louis Roginski? A. Well, I cannot exactly state, but I presume I met him within about a month or so after I arrived in this city. I cannot state definitely.

Q. Was Solomon Lewis always your name? A. Yes.

Q. Was Lewis the name of your parents? A. No, sir.

Q. What was the name of your parents? A. Czodicoff.

Q. And you seem to have adopted the name of Lewis yourself? A. Well, that is peculiar how I adopted it, but if you want to know the circumstances it is very easily explained. I did not adopt it because I went away on account of any crime or anything of that kind that would make me ashamed of the name. When I arrived in New York the officer there in charge of the examination asked me my name and he asked me to spell it. My middle name was Lewis—Solomon Lewis Czodicoff—and he suggested to me to drop the Czodicoff and let it be Solomon Lewis, and I took him at his word and it has been Lewis ever since. Naturally I go by the name of Lewis, and have never been known by any other name.

265 Q. How old did you say you are now? A. I will be forty-five my next birthday.

Q. When did you marry the sister of the defendant Minnie Goldberg? A. December, 1876.

Q. How old was she then? A. My wife?

Q. Yes. A. She is six weeks younger than I am.

Q. So she was twenty years old, and you are about the same age? A. I was not quite twenty.

Q. Did you marry under the name of Lewis? A. Yes.

Q. You say you went into business in 1880 with Mr. Roginski? A. About that time.

Q. That has been about twenty years ago, and you were then only twenty-five years old? A. Yes, sir; in that neighborhood.

Q. What knowledge had you of sign-painting before that? A. None at all; no more than I have now.

Q. Now, why did you two people form a partnership in a business you knew nothing about? A. I think that is irrelevant to this case, and I don't see why my private life should come into it.

266 Q. You put yourself in that position. A. Not at all.

Q. I insist on an answer.

Mr. FIELDS: I must state to the witness that the line of cross-examination so far has been entirely foreign to the examination-in-chief, and the law is that a man may not be asked upon cross-examination on any matters that have not been touched upon or brought out by his examination-in-chief. You are at liberty, therefore, to avail yourself of that rule of law.

A. I will answer these questions, but they seem to me to be foreign to this case. I went into business because Mr. Roginski was a practical sign-painter and I was a practical business man, and we formed a partnership together, and we succeeded until we dissolved.

Q. You were quite a young man then? A. Very young.

Q. Had he ever been in business for himself before in sign-painting? A. No; he worked around the shop.

Q. Did he have any money when he went in business with you? A. No, sir.

Q. What had he been receiving as a salary before he went in business with you? A. I suppose about fifteen or sixteen dollars a week; and then when he worked at piece-work he would make more.

267 Q. At the time you and he entered into partnership how many were there in the family of his mother? Of whom did the family consist? A. We all lived then together—that is, my mother-in-law, Mrs. Roginski, my wife, Minnie, the defendant in this case, and two boys.

Q. And what portion of the expenses did he pay? A. We had a general partnership. We lived there together and the expenses were paid out of the business.

Q. You mean to say you paid as much as he did for the expenses? A. Yes.

Q. How long did that arrangement continue? A. It continued four or five years.

Q. That would bring it to about 1884 or '5? A. About.
Q. Then you left the family? A. Then I moved away and lived separately.
Q. What caused you to break up that arrangement? A. My family increased and the house was too small for us all.
Q. After 1884, as a matter of fact, you don't know anything about who ran the family, except from what Mr. Roginski told you? A. As a matter of fact, I know everything.
Q. What do you know? A. I know when the expenses came there.
268 Q. How do you know that? A. I was in the house at all times. I was there all the time.
Q. You did not live there? A. I did not sleep there, but I lived there.
Q. Did you eat there? A. Many a time; yes.
Q. Did you eat every meal there? A. No, sir.
Q. Did you eat there once a day? A. Not every day.
Q. Then you only went there to visit in the family after that? A. I was in the house. It was not a matter of visiting, but I was in the building, the house. There was our shop there over the kitchen and the dining-room downstairs and the other rooms upstairs.
Q. You don't know about the financial part of it? A. Yes.
Q. Where was this? A. 908 D street.
Q. Now, you say by reason of having your shop there you knew who paid the expenses? A. And being partners with the man who paid the expenses.
Q. How do you know he paid these expenses? A. Because
269 I attended to the financial matters and I would give the money to the old lady for marketing and clothes and shoes and whatever was necessary. I am stating this from knowledge and not from observation.
Q. You say you attended to the financial part of it? A. Yes.
Q. And gave it to her? A. Sometimes I gave it to Minnie, and sometimes to the old lady, and sometimes to Mr. Roginski, as the occasion demanded.
Q. You did not keep any book account, but just divided up the money as you got it in? A. Yes.
Q. You kept a book? A. We kept books for outstanding bills and work we did, but we never kept a financial book between us.
Q. You would give them the money whenever they would come for it? A. Yes.
Q. How much did you give them in one month? A. Indeed, I could not tell you.
Q. Did you give them $100? A. Yes.
Q. Every month? A. No, sir.
Q. Was that $100 you claim to have given one month Mr.
270 Roginski's share of the profits? A. Indeed, I cannot tell you.
Q. Now, did you ever give Minnie D. Goldberg any money? A. Yes.

Q. From whose funds? A. From the general funds of the firm.

Q. For what purpose was it given? A. For various purposes. Now, for instance, she used to buy shoes from Rich when he was on the avenue. She would go in there and buy the shoes, and we would settle the bill, and various things of that kind. I could not remember all these things.

Q. She would buy shoes on credit, and you would settle the bill? A. Yes.

Q. When was this? A. I cannot for my life remember these instances.

Q. Now, when did she go to work for Mr. Baum? A. I don't remember the date.

Q. Did you ever see her have any money from these places? A. I cannot say that.

Q. Did you ever see her at work in this place—Baum's? A. Yes.

Q. What was she doing? A. What salesladies do.

271 Q. Isn't it a fact she went there as a cash girl? A. If she did, I don't remember it.

Q. Do you know what year she went there? A. I do not.

Q. How long did she stay with Mr. Baum? A. I cannot tell you that.

Q. She may not have been there a year? A. Oh, yes, she was. I remember it was more than any year.

Q. More than a year? A. Yes.

Q. You don't know how much more? A. Indeed I do not.

Q. When did she go with Mr. Lansburg? A. Immediately after she left Baum's.

Q. You don't know what year it was? A. No, sir.

Q. And you don't know how old she was then? A. I cannot tell you.

Q. How long was it before she married the defendant? A. Some years, but I don't know.

Q. Was it five or six years? A. At least.

Q. Five or six years before she married Mr. Goldberg? A. Yes; at least that.

Q. How long did she work for Mr. Lansburg? A. I cannot tell you.

272 Q. Don't you know she did not work but only about three months there at Lansburg's? A. I don't know anything of the kind.

Q. How long did she work there? A. I don't know. I cannot tell you how many years, but I know she worked years there.

Q. You don't know she worked a month or three months at Lansburg's? A. I am not talking about a month or three months. I am talking of years.

Q. Did she work a year at Lansburg's? A. Yes.

Q. How many? A. I don't know. I think she worked four or five or five or six years at Lansburg's.

Q. You think she worked five or six years at Lansburg's? A. Yes.

Q. And how long at Baum's? A. I don't remember. I could not tell you.

Q. You never saw her have any money of her own in your life? A. I never asked her her business, whether she had any money or did not have any money. I could not say whether she did or did not have any.

Q. How do you know Mr. Louis Roginski provided her with silks and clothing? A. I did not say silks and clothing.

273 Q. How do you know he provided her with the necessary wearing apparel suitable to her position in life? A. I am sure she had it and I know where the money came from.

Q. Did you give her the money? A. Yes.

Q. To buy what? A. To buy clothes.

Q. What kind of clothes? A. Winter clothes in winter months, and summer clothes in summer months.

Q. You gave it to her? A. Yes.

Q. At the same time she was working at Baum's and Lansburg's? A. Yes.

Q. You don't know she bought clothing with it? A. No, sir.

Q. You gave her the money and you don't know what she did with it? A. No, sir; it was very apparent she bought clothes.

Q. How much money did you and Mr. Roginski make? A. It all depends; some months more and some months we would lose.

Q. What was your average monthly income? A. About $5,000 a year.

274 Q. Including your expenses? A. Yes.

Q. And help? A. No, sir.

Q. You made about $2,500 a year apiece? A. Yes.

Q. About $200 a month? A. Yes.

Q. You averaged that continuously? A. No.

Q. That was the highest? A. That was about the best season.

Q. And some years you lost? A. No.

Q. You said some months you lost. A. Yes.

Q. How long did that continue? Up until you dissolved partnership? A. Yes.

Q. When did Mr. Roginski leave Washington? A. As near as I can remember, about three years ago.

Q. Why did he leave? A. I cannot say.

Q. Don't you know it is a fact that it was on account of a lot of bills and creditors? A. I know he left bills and creditors, but I don't know whether that prompted him to leave Washington.

275 Q. What was the amount of his bills? A. Indeed, I could not tell you.

Q. Then you say you had a chance to observe whether or not Mrs. Goldberg before she was married was extravagant or not. What did you mean by that? A. I suppose I mean the same as the question.

Q. What would you consider extravagance in her station of life? A. Extravagance is where a person cannot afford to spend the money—where he cannot afford these luxuries.

Q. Don't you think she could afford to spend her own if she had it? A. I suppose so.

Q. And how many dresses did you give her the money to buy a year? A. Indeed, I could not tell you.

Q. You don't know personally whether she had a dollar or not when she married Goldberg? A. I do not.

Redirect examination.

By Mr. FIELDS:

Q. During the time that Minnie D. Goldberg was working was Louis Roginski financially able to support her and her family? A. Yes.

Recross-examination.

By Mr. SIMMONS:

Q. What did Mr. Roginski do when he dissolved partner-
276 ship with you? A. He opened another place.

Q. When was that? A. About six years ago, as near as I can remember. It must have been about 1895.

Q. Do you know what the expenses of the running of that family was? A. I ought to know.

Q. How much? A. Our expenses there for the house were about an average of $35 a week—about $140 a month.

Q. That was the expense of your—— A. Of the house.

Q. Of the household? A. Yes; that is, when both families lived together.

Q. Now, what kind of a mode of life did Mr. Roginski lead? A. I can only state from the shop—during business hours.

Q. You did not see him at night at all? A. No, sir.

Q. You don't know what he did at night? A. No, sir.

Q. Was he not out nearly every night? A. He would be around the theatres a good deal. He used to have calcium lights there.

277 Q. Did he drink? A. No, sir.

Q. You never saw him drink? A. He never did drink.

Q. Do you know when Mrs. Goldberg stopped working for Lansburg? A. I cannot say. I don't remember.

Q. Cannot you approximate it, how many years it was before she was married? A. No; I could not. It was some time, but I cannot remember.

Q. It was considerable time, was it not? A. Yes; it was considerable time, but I cannot state. I don't remember.

Q. Was it before you dissolved partnership? A. Indeed I don't remember.

SOLOMON LEWIS,
By J. A. SWEENEY,
Examiner in Chancery.

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278 Also ISAAC ROGINSKI, a witness produced in the same behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. FIELDS:

Q. Please state your name and residence. A. Isaac Roginski; residence, 600 H street northeast.

Q. What is your occupation? A. Clerk.

Q. Do you know the complainants, Mary Shappirio and Jacob I. Shappirio? A. Yes.

Q. How long have you known Jacob I. Shappirio? A. I have known him since the first day he landed in Washington.

Q. About how many years ago was that? A. Well, it must have been about fourteen or fifteen years, maybe a year longer. I cannot remember what year it was.

Q. How long have you known his wife, Mary Shappirio? A. Since they married.

Q. About how long has that been? A. I cannot tell how many years he has been married.

Q. About how many years? A. About eight or ten years. I cannot exactly tell what year he married her.

279 Q. How long have you known the defendant George Goldberg? A. I have known him since I have been here in this town.

Q. How many years? A. Well, I believe it was in 1872 I landed here.

Q. What relation are you to Minnie D. Goldberg? A. She is a sister of mine.

Q. Do you know Leopold Richold? A. No, sir; I didn't know him until that deal was made.

Q. How long ago was that? A. It must have been about thirteen or fourteen months. Of course, I am not personally acquainted with him.

Q. Did you know him before this deal about the property? A. No, sir.

Q. Were you present on the day that the paper was signed giving Richold authority to sell the property? A. Yes.

Q. Was anybody with Richold that day? A. No, sir.

Q. Who were present at the time? A. Mr. Goldberg and Mrs. Goldberg and Mr. Richold, and I was standing at the arch between the two stores.

Q. About how far away were you from Richold at the time
280 he wrote that paper? A. About ten or eleven feet.

Q. Did you hear the conversation between Richold and Goldberg at that time? A. I was standing there while they were talking.

Q. Who wrote the paper? A. Mr. Richold.

Q. Did Mr. Goldberg or Mrs. Goldberg or you read it after he wrote it? A. No, sir.

Q. Who read it? A. Mr. Richold.

Q. Did you hear him read it? A. I heard him read it—yes.

Q. What, if anything, was said by Goldberg about the dimensions of the property? A. While Mr. Richold was reading the paper Mr. Goldberg made the remark, "Stop," he said; "one lot don't run as far as the other." And Mr. Richold said, Is that so? And Mr. Goldberg said, Everything you will find in the deed which belongs to it. And Mr. Richold said, All right, all right—just like that.

Q. Was anything said about only a part of the lot running back to an alley? A. No, sir.

Q. Who was it made the statement about the deed? A. Mr. Richold said, "Well, the deed will show everything—the width and
281 depth of the property—you will find everything in the deed." He said, "All right, all right," just like that. That is all he said.

Q. Did Goldberg say that the whole of the lot ran back to an alley? A. No, sir; only part of the lot. One part of the lot runs out to the alley.

Q. When Richold read the paper did you hear him read anything about the three per cent. commission to himself? A. No, sir; I did not.

Q. Before the paper was signed, did you see Mr. Richold and Mr. Shappirio at the premises? A. Yes; I did.

Q. How often? A. I only seen him once, on Sunday.

Q. What did they do that day? A. They came into the store at 1247. I was at 1245, fixing up the stock after Saturday. I always fix up on Sunday and straighten things out.

Q. Is there any opening between the stores of 1245 and 1247? A. Yes; there is an arch.

Q. How large? A. I guess the arch must be four and a half feet or so.

Q. What did Richold and Shappirio do there that day? A. That I cannot tell you, sir.

Q. Do you know whether they looked over the property?
282 A. No, sir; I don't know anything about that, because I was at 1245.

Q. Did you see them in the back yard of 1247 that day? A. No, sir.

Q. Did you see Goldberg showing them around that day? A. No, sir.

Q. Did you see anybody else showing them around? A. No, sir.

Q. Now, after that paper was signed, did you ever see Mr. Shappirio in the property with a man named Thomas F. Galloway? A. No, sir; I did not.

Q. Do you know any such man? A. No, sir; I don't know the man at all.

Q. Did you ever hear the name before? A. While I was here in your office; that is all.

Q. At the time the paper to Richold was signed was anything said about the ownership of the ground or the shed in the rear of 1247? A. No, sir.

Q. Was the matter talked about at all? A. Not a word, sir.

Q. Did you ever hear Richold speak about it afterwards? A. No, sir.

Q. Did you ever hear Mr. Shappirio speak about it after-
283 wards? A. No, sir.

Q. Was there any water-closet in the yard of 1247? A. No, sir.

Q. You knew, of course, at the time the paper was signed that the property in the rear of 1247 did not belong to Goldberg? A. I did not know anything at all about it.

Q. Did Goldberg ever introduce Shappirio and Thomas F. Galloway to you? A. No, sir.

Q. Did you know Shappirio before you saw him at the property down there? A. Yes.

Q. Did you know him well enough not to require any introduction to him? A. I knew him personally; yes.

Q. Before the sale was closed, did Goldberg ever tell you to take Shappirio and Galloway to the stables and show them everything that belonged to the property? A. No, sir; he did not.

Q. Did you ever show Shappirio and Galloway, or Shappirio alone, or Shappirio with anybody else, through the property or through the yard or through the stables? A. I did not.

Q. Did you ever take them into the stable of 1245 and show them what nice chickens they could raise, and how large it was,
283½ and what a spacious stable it was? A. I did not.

Q. Did you ever tell them they could keep a horse and buggy there and any convenience they wanted? A. I did not.

Q. Did you ever take them out of that stable into the alley? A. No, sir.

Q. Did you point out a thirty-foot alley in the rear of the stable to them? A. I did not.

Q. Did you show them a goat at the rear of 1245? A. No, sir; there were a lot of goats there. I did not show them any goats at all.

Q. Did you ever own a goat of your own? A. At one time, years ago.

Q. Did you have one at the time of the sale or shortly before? A. No, sir.

Q. Did you ever take Shappirio and Galloway into the stable of 1245 from the alley? A. No, sir.

Q. Could you get into the stable of 1245 from the alley? A. No, sir; I could not get in at all.

Q. Why not? A. Because the only way to get in the stable of 1245 is to take the bar off. That is the only way you can
284 come in from the back is to take the bar off and then go out into the alley. You cannot come from the alley.

Q. Did you hear Shappirio state to Goldberg at any time that if he, Shappirio, wanted to build a stable he could make one out of the two, which would make a right decent stable? A. No, sir; I never heard anything of that conversation at all.

Q. Did you ever see Mr. Shappirio in the premises after the sale? A. One Sunday with his two children, two boys, he had with him.

Q. How long after the sale was that? A. It was maybe three or four weeks after. I cannot remember the time.

Q. Did he have anything to say? A. Nothing at all. He just came in with the boys, that is all.

Q. Did he talk about the property? A. Yes; he was talking about moving in there, and was going to purchase a lot of musical instruments and fire-arms, and he says you can make it pay and can make money.

Q. Do you know anything about a "for sale" sign that Richold wanted to put on the property after he sold it to Shappirio? A. Yes; Mr. Richold came in—I don't remember what day it
285 was. Mr. Goldberg was not at home, though; and he wanted to put up a for sale-sign and my sister said to Richold, I wish you would not put it up. We have a good many debts, and folks will see the sign and they will not pay them. And he said, Never mind; I won't put it up. That is all.

Q. Was anything said by Richold as to the price they wanted for the property? A. Yes; he made the remark that Mr. Shappirio is just speculating and wants to make a thousand dollars on the deal. Just like that.

Q. Did you know Shappirio when he clerked in 1247 for Cohen? A. I did.

Q. Did you ever point out the stable or the ground in the rear of 1247 to Richold, Shappirio, or Galloway, as being a part of the property? A. I did not, sir.

Q. Did you ever know Goldberg to do so? A. No, sir.

Q. Where were you living at the time? A. In that number, 1245 and 1247.

Q. Were you there all the time? A. Yes.

Q. Where did you work? A. I worked there, clerking.

Q. If Shappirio had come there with Galloway and gone
286 through the two buildings and the yards and stables and over the ground in the rear, would you have known it? A. I suppose I would; yes. Yes, I would, because I was in the building.

Q. Do you know any brother-in-law of Jacob I. Shappirio? A. Yes.

Q. What is his name? A. I believe they call him Adler. In fact, I don't know his correct name.

Q. Did you ever have any talk with him about this ground in the rear of 1247? A. No, sir.

Q. Who put up the fence around this strip of ground? A. My brother Louis.

Q. Did anybody help him? A. I did.

Q. Who directed the fence to be put up? A. My sister did.

Q. Who paid for it? A. My sister.

Q. While Goldberg lived in the property, what use was made of the shed in the rear of 1247? A. For putting away old storage, such as boxes and different things.

Q. Were there any articles in the shed when you moved away? A. Yes.

287 Q. Of what kind? A. Different stuff; counters, cases, and boxes.

Q. What kind of stuff? A. Well, show-cases and counters and boxes of shoes, and also tinware and stoves.

Q. Has any of that stuff ever been taken out since you moved away? A. No, sir.

Q. Is it still in the shed? A. Yes.

Q. Is it full or otherwise? A. It is filled up; yes.

Q. Is there any passageway from 1247 to the alley? A. Which way do you mean?

Q. To get back into the alley. A. There is only from 1245 to go into the alley,

Q. Is that passageway open between 1245 and 1247? A. Yes.

Q. Is there any areaway or L between 1245 and 1247? A. Yes.

Q. About how wide is it? A. Well, I don't know. It must be about seven feet; maybe not quite, but it is just about—between 1245 and 1247.

Q. How wide is this way that runs back to the alley now?

288 A. I guess it is about four feet.

Q. Do the doors of the little summer kitchen open inwardly or outwardly? A. Inwardly.

Q. Is there any difficulty in going out of the east door of the summer kitchen into the areaway or L? A. No, sir; there is no difficulty.

Q. To what extent do the cellar doors interfere with ingress or egress through this door of the summer kitchen? A. They don't interfere at all.

Q. Is the summer kitchen a temporary or permanent structure? A. It is temporary; for the storms.

Q. Of what material is it constructed? A. Wood.

Q. What use was made of it when you lived there? A. Just to keep the wind from going into the kitchen.

Q. Was it ever used as a kitchen? A. No, sir.

Q. Is there any door in the west wall of the back building of 1247? A. No, sir; there is no door there.

Q. In what direction does the door of that back building face? A. It faces north.

Q. Is that the only door of the back building? A. Yes; that goes in the kitchen in the back building.

289 Q. Is there, then, any difficulty whatever in going out of the back door of 1247 along this passageway between the two buildings to the alley in the rear of the property? A. No, sir; no difficulty at all. You can go right straight out.

Q. Did any one else work for Goldberg in the store except yourself? A. Nobody but myself.

Q. Were you present at the time Shappirio bought some shelving and stuff from Goldberg just before Goldberg moved away? A. Yes.

Q. Did you hear the talk between them? A. Yes.

Q. Was anything said during that conversation about the ground or the stable in the rear of 1247? A. No, sir.

Q. Anything whatever? A. No, sir; they never said a word.

Q. Could the shutters to the window in the back wall of 1247 be closed? A. No, sir.

Q. Why not? A. Because there are iron bars there.

Q. Did the iron bars prevent the closing of the shutters? A. Yes.

290 Q. Were the shutters ever closed, so far as you know? A. No, sir.

Q. After Shappirio knew that he did not own the stable in the rear of 1247, did you have any talk with him about the property? A. I was at the store and was alone and Mr. Shappirio came into the store. He came in, and he just walked in and says, "I bought the property cheap enough," and he walked out, and that is about all. That is the last time I saw him. I haven't seen Shappirio since.

Q. Did Shappirio know at that time that the stable did not belong to it? A. He never mentioned it to me.

Q. Did he appear excited or angry? A. That is just the expression he made, "He bought that property cheap enough," and he turned around and walked out. That is the last time I seen him.

Q. Where did that conversation take place? A. At 1217 11th street southeast, in the store where I am working now.

Q. Do you know why your sister bought this little strip of ground in the rear of 1247? A. I do not.

Q. Do you know anything about Goldberg's affairs before your sister married him? A. No, sir.

Q. Is the property back of 1245 and 1247 improved or
291 unimproved? A. Unimproved; vacant lots.

Q. Are there any buildings at all back there? A. No, sir; not facing that property; no buildings at all.

Q. How far west is it vacant? A. As far as 10th street.

Q. Is the ground graded? A. No, sir.

Q. Is there any alley laid out or improved in the rear of 1245 and 1247? A. There is an alley laid out, but it was never improved.

Q. What is the character of the ground in the rear of these premises? A. Commons.

Q. What use is made of it? A. No use at all.

Q. Is it used for pasturing goats or is it used for a dumping ground? A. No, sir.

Q. Has it ever been used for that purpose? A. Not that I know of.

Q. What were the goats doing back there about which you spoke a while ago? A. The goats were at the navy-yard wall. That is a good distance from it.

292 Q. Which building is the deeper, 1245 or 1247? A. 1245.

Q. How much deeper? A. I cannot say.

Q. About how many feet? A. Well, I don't know. That is something I cannot tell.

Q. Is it enough deeper to be very noticeable? A. Yes, sir.

Q. At the time of the sale, did you have a bull-dog in the rear of 1247? A. No, sir.

Q. Thomas F. Galloway has testified that he went to these premises with Shappirio and met Goldberg there and you, and they got to talking about the property and one thing or another and finally Goldberg turned around to you and said, "You take Mr. Shappirio out and show him the property;" that Goldberg went back to the rear door and you went out in the rear with Shappirio and Galloway and carried them out and showed them the property, and, among other things, you showed them the stable on the south lot; that you said to them, "Look out for the bull-dog; don't get too close to the stable or the dog might bite you;" that you said to them that the stable belonged to the property, the carriage-house and stable; that you also said to them that that was part of the property, and that you explained to Mr. Shappirio and to
293 him, Galloway, how nice it would be in case anybody wanted to keep a horse; that you had a lot of chickens and ducks all around there, and showed them the entrance to the property, and carried them to the other lot and showed them that, the north lot, and said that the frame stable on the north lot did not amount to very much, but that it would do in case of emergency to keep a wagon or something of that kind in; that you carried them out of that and showed them the entrance to the rear and you went there and showed them a large alley which you told them came clear through the lot and came clear to the south, and you explained the whole thing to them and practically told Mr. Shappirio, in the presence of Galloway, that both those stables belonged to the property which he, Shappirio, was buying. What have you to say in regard to that testimony of Mr. Galloway's? A. I did not. I could not show him anything. I never said anything to him about the stables at all.

Q. Did you ever do or say those things to Mr. Shappirio? A. I did not.

Q. Is the shed in the rear of 1245 up against the building? A. Yes.

Q. How do you get from 1245 into the alley? A. You go right through the shed and go into the alley.

294 Q. How do you come out of 1245? A. Through the kitchen door.

Q. In what direction does that door face? A. It faces south.

Q. Did you ever take Shappirio and Galloway through the buildings 1245 and 1247? A. No, sir.

Q. Did you ever show Galloway the premises at all? A. I did not.

Q. Did you ever hear of such a man before the institution of this suit? A. No, sir.

Q. Did you see any mechanics on the premises after the sale was closed? A. I did.

Q. Do you remember how many? A. There was two.

Q. Did they do any work there? A. They were painting the roofs.

Q. Do you know of any others that were there? A. No, sir.

Q. Of what material is the areaway or L and the passageway between the two buildings covered? A. Concrete.

Q. All of it? A. Yes.

Q. Do you know anything about your sister's having worked
295 in Baum's and Lansburg's, in this city? A. Yes.

Q. Where did she work first? A. Baum's.

Q. How old was she when she first began? A. About *fourteen.*

Q. Do you know how long she worked at Baum's? A. About four years.

Q. What did she do there? A. She started in as a cash girl and then she clerked afterwards.

Q. Do you know how much money she received? A. I cannot tell you that.

Q. Where was she living while she worked with Baum? A. At home with her mother and brother.

Q. When she left Baum's did she work at any other place? A. She stopped for about a year. Mother was sick; and after that she worked at Lansburg's.

Q. What work did she do at Lansburg's? A. She had charge of a counter.

Q. Do you know how much money she got there? A. At the last she got $7 a week.

Q. And where did she live while she worked for Lansburg's? A. At home, with us.

Q. Who ran the house during those years? A. My brother, Louis.

296–298 Q. Was your sister under any expense for her living expenses and clothing? A. No, sir.

Q. Who provided them? A. My brother did.

Q. Do you know whether your sister saved any of the money she earned at Baum's and Lansburg's? A. Yes.

Q. Do you know how much she had saved when she stopped working at Lansburg's? A. I guess she must have had between six and seven hundred dollars.

Q. Did she use any of that money for herself for living expenses? A. No, sir.

Q. Do you know whether she had any of that money at the time she married Goldberg? A. Yes, she did.

Q. Do you know anything at all about the purchase by Mrs. Goldberg of this strip of ground in the rear of 1247 after the sale to Shappirio? A. No, sir.

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299 FRIDAY, *October 4th*, 1901—4 o'clock p. m.

Met pursuant to adjournment last noted.
Present: Same counsel.

Whereupon ISAAC ROGINSKI appeared for cross-examination—

By Mr. SIMMONS:

Q. Mr. Roginski, you are a brother of the defendant in this case, Mrs. Goldberg? A. Yes.
Q. And are a cousin of the defendant George Goldberg, are you? A. Not a cousin, a second cousin.
Q. Now, how old are you? A. I am in my fortieth year.
Q. When did you come to this country? A. What year?
Q. Yes. A. I cannot remember that.
Q. How many years ago? A. Well, I can trace that back if you give me time. I was eleven years old.
Q. That would bring you here about twenty-nine years ago. A. Yes.
Q. And you have been here about twenty-nine years? A.
300 Yes.
Q. What did you do when you first came to this country? A. What did I do?
Q. Were you employed in any way? A. I sold papers at that age.
Q. You sold papers on the street as a newsboy? A. Yes.
Q. Was your father living then? A. No, sir.
Q. When did he die? A. I don't remember what year. He got killed.
Q. How did he get killed? A. He was killed by a darkey or a nigger.
Q. In this country? A. In this country.
Q. What brought about the killing? A. I cannot say; I was not here at the time.

Mr. FIELDS: I object to the question as not being material to the issue in this case.

Q. Now, who supported the family at that time, after your father was killed? A. My brother, and I helped along.
Q. What brother was that? A. Louis Roginski.
Q. Is he the one that helped to build the fence around this lot? A. This is the one (witness pointing to himself). He was
301 the one put it up.
Q. And you helped? A. I helped him.
Q. And he helped you? A. I suppose we helped one another.
Q. How old was your brother Louis when your father died? A. He was younger than I am.
Q. And he is younger than you still? A. Yes.
Q. How old was your sister, Mrs. Goldberg, when your father died? A. She comes after me. You know, she was very young.
Q. What did he do? A. Who?

Q. Your brother after your father died—anything towards the support of the family? A. Yes, sir.

Q. Do you know when they first moved to 908 D street? A. No, sir.

Q. Is that where they lived? A. Yes.

Q. You don't know when they first moved there? A. No, sir.

Q. Were you in the city at that time? A. I was not.

302 Q. You were not in the city? A. No, sir.

Q. When did you leave the city? A. I cannot tell you what year it was.

Q. How old were you, approximately? A. I cannot tell you exactly what year it was.

Q. How many years after you came here before you left? A. I cannot remember how many years it was. I like to tell the truth.

Q. Do you know how old you were? A. I was a few years in town here, in Washington.

Q. You were a few years here and then you left the city? A. Yes.

Q. Where did you go? A. To Pittsburg.

Q. And when did you come back here again? A. I stayed away quite a while. For a fact, I don't know how many years I was away. I never kept the record.

Q. When you returned you were a grown man, were you not? A. Yes.

Q. And were they living then on D street? A. When I found them they were living on D street.

Q. You don't know what year they lived on D street? A. I cannot tell you that.

303 Q. When you returned did you go with them to live on D street? A. I did.

Q. What was the lower part of the house in which they lived used for? A. Parlors.

Q. Wasn't there a paint shop there? A. After they took out the front and turned it from a parlor into a paint shop.

Q. How long were they using it before they used it for a paint shop? A. I was not here at that time.

Q. Was it used as a paint shop after you returned? A. After they built it.

Q. Was that when Roginski and Lewis were in partnership? A. Yes.

Q. How many rooms were in the house besides this shop? A. I cannot tell you now, as I was away for quite a while from there.

Q. How long have you been away from there? A. Since they dissolved partnership.

Q. How long has that been? A. I cannot tell you. I never traced anything like that back.

Q. Can't you tell how many years it has been? A. Indeed I could not.

304 Q. How long did you live in this house with them? A. I cannot tell you that neither.

Q. Give us the time approximately. A. If you give me the time I can tell you.

Q. Did you live there a year? A. More than a year.

Q. Now, you had access to any part of the house when you lived there, didn't you? You could go about any part of the house? A. Yes.

Q. And you mean to say you don't know how many rooms there were in that house? A. If you give me time I can tell you.

Q. See if you can find out. Was there six? A. There is no use to say six. I will think it out if you give me time.

Q. Well, think it out. A. There was five rooms upstairs besides the paint shop.

Q. Besides the paint shop? A. The paint shop is not a room. It is a workshop.

Q. Did Mr. Lewis's family live there with you? A. Yes.

Q. How many did they have in his family? A. When I came home he had in his family, I believe, four.

305 Q. You believe four? There were four—his wife and himself and two children? A. I said four, not two children.

Q. He had four children and himself and wife? A. I believe there was four. I want to speak correctly. It is either three or four.

Q. He had three or four children and his wife and himself? A. Yes.

Q. Then how many did your mother's family consist of? A. Isaac, Louis, Minnie, and mother.

Q. That was four of you? A. Yes; four in the whole family.

Q. Now, what was your sister doing when you returned there? A. She was working in the store.

Q. In whose store? A. She was working for Baum.

Q. At that time? A. Yes.

Q. You never saw her at work for Baum? A. Yes.

Q. You were there? A. Yes.

Q. Now, you say you are now at 600 H street N. E.? A. I live at 600 H.

Q. And you are a clerk? A. Yes.

306 Q. For Mr. Goldberg? A. Yes.

Q. What does he pay you? A. That is more than I can tell you, Mr. Simmons.

Q. Does he give you the same privilege as one of the members of the family or pay you a salary? A. He pays me a salary, but my salary I cannot tell.

Q. You refuse to say? A. I won't tell.

Q. I understand you won't tell how much you receive? A. Yes.

Q. You sleep and eat at Goldberg's house, do you? A. Yes.

Q. You say you have known Mr. Shappirio, one of the complainants in this case, since you landed in Washington? A. Yes.

Q. How long has that been? A. Well, just as long as he has been here; about fifteen or sixteen years.

Q. How did you know him? A. I know him from the first night he landed here.

Q. Were you ever employed by him? A. You asked *him* how did I know him, and I will explain how I got acquainted with the gentleman from the beginning called Jake Shappirio. I and another young man took this man across on Pennsylvania avenue the first night he landed in Washington city, if you know a
307 place between 10th and 11th on Pennsylvania avenue, on the south side; it says rooms twenty-five and fifty cents. I took him in there and put him in his night's lodging—Jake Shappirio. So that is the first I got acquainted with him, and I know him since.

Q. Were you ever employed by him? A. Yes.

Q. As clerk? A. To take charge of one of his stores.

Q. How long were you engaged with him? A. I was engaged with him, I believe, at one time for about a year, taking charge of 915 D street. Shappirio & Company, I think it was.

Q. Where did you live then? A. At 908 D street.

Q. Did you live with your parents then? A. I did, sir, with my mother and the rest of the family.

Q. Did you live at any other place at all? A. No, sir.

Q. While you were employed by Mr. Shappirio? A. What do you mean?

Q. I mean while you were employed by Mr. Shappirio or during the time you were in his service you didn't live at any other place than with your mother? A. After I quit Shappirio I started for him again at another place. I took charge of for him at 917 D
308 street, I believe it must be, and 919. That is only a few doors apart. That is the time I lived at Pickford place, 647.

Q. You didn't live with your mother then? A. No, sir.

Q. What did Mr. Shappirio pay you? A. He paid me $8 a week, and, I believe, two per cent.

Q. What did your salary amount to altogether a month? A. I never figured up the profit by the month.

Q. How much a week? A. I used to pull up as far as eleven and twelve dollars some weeks or a little more, according to what I used to sell for my percentage.

Q. What did you have to pay home? Did you pay any board home? A. I helped along in the family.

Q. You chipped in and helped the family along? A. Yes; we were altogether.

Q. About how much of that was it necessary to expend in the family? A. Well, you cannot tell how much you would expend; some weeks more and some weeks less; whenever they needed money.

Q. Whenever they needed money? A. Today you eat meat and tomorrow you don't eat any. You can never balance the cost of living. Some days I eat two meals and some days I eat
309 four.

Q. Now, who attended to the house affairs at your mother's? Who attended to the marketing? A. My mother used to go to market.

Q. Did you ever go to market yourself? A. No, no.

Q. Now, you don't want to think I am trying to catch you, but there is a certain part of the testimony you gave I want to read. How often did you give your mother money to go to market? A. There was no limit at all. It was all in the family.

Q. How often did you give her money? A. Any time she wanted it. There was no limit.

Q. How often did she call on you? A. I cannot tell.

Q. Once or twice a week? A. That is what I cannot tell you, Mr. Simmons.

Q. She did call on you during every week? A. I cannot tell you. When she needed it she got it.

Q. She did call on you for money for market? A. When she needed it she got it. I don't know when she went or how often she went.

Q. How long have you known Mr. Goldberg? A. Since I landed in Washington.

310 Q. You say you came here in 1872? A. I didn't say what year.

Q. You say, "I believe I was here in 1872." A. I say I was here when I was eleven years old. You can trace it back.

Q. That is about right. Now, you say you didn't know Mr. Richold until this deal was made? A. No, sir.

Q. Were you referring then to the sale of the property down there? A. That is the time I knew Mr. Richold.

Q. Did you ever talk with Mr. Richold? A. Where?

Q. Any time. A. Yes; the time he was making the deal with Mr. Shappirio.

Q. You talked with him then? A. Just good morning and good evening.

Q. You never talked to him any other way? A. No, sir.

Q. Did he know who you were? A. I cannot tell you that.

Q. What did he say to you when he came to the place; just good morning? A. Good morning and good evening.

Q. Did he call for Mr. Goldberg? A. Not by me; I was attending to the store.

311 Q. You were attending to the store and you paid no attention to what he and Mr. Goldberg were doing? A. You asked me if I ever had any conversation with Mr. Richold. I said good morning or good evening to the man, and now and then I had to attend to the customers.

Q. When he and Mr. Goldberg were talking, you saw them talking to one another? A. Yes.

Q. Did you listen to the conversation when they were talking? A. I was attending to the customers sometimes and listened sometimes in that archway.

Q. Were you in the archway the first day he met Mr. Goldberg there? A. Yes.

Q. Were you in the archway on the second day? A. The second day, when?

Q. The second day he called. A. He didn't call the second day.
Q. You say he never came there but once? A. Oh, he has been there more than once.
Q. I mean before the sale took place. A. Before the sale he was there on a Sunday with Jake Shappirio.
Q. Now, did he talk with Mr. Goldberg then? A. They were talking in the store.
Q. Had he not been there before that Sunday? A. Mr.
312 Richold?
Q. Yes. A. No, sir.
Q. You are positive of that? A. Yes, I am sure. That is the first time I ever saw him.
Q. That is the first time you ever saw him? A. Yes.
Q. You were in the store all the time? A. Yes.
Q. When did you see him the next time? A. The next time I seen him on a Friday. He came in. Well, he says——
Q. You don't need to tell what he said. I asked you when was the next time you saw him? A. On Friday.
Q. Sunday he was there and he called again on Friday—the following Friday? A. Not the following Friday. It was one or two weeks. I cannot tell exactly. It was on Friday.
Q. You are positive it was on Friday? A. Yes.
Q. What makes you say so? A. I always count my dates.
Q. That is more than a year ago? A. Yes.
313 Q. And yet you know positively it was on Friday? A. Yes.
Q. Did you talk to anybody about the date? A. No, sir.
Q. Nobody ever mentioned it to you? A. No, sir.
Q. That it was Friday? A. I know it was Friday.
Q. Did anybody mention to you it was Friday? A. I always know when it is Friday when I have one of the little books. I always can tell when Friday is.
Q. You know he called on Friday? A. Yes.
Q. What transpired on the day prior to that—Thursday? Do you know what took place on Thursday? A. He was not there.
Q. What took place in your store on Thursday? A. That is different, you know.
Q. What took place on the Saturday after this Friday, in the store? A. Well, there was a nice lot of customers came in. Names I can give you—some of them, if you know them, that came in.
Q. What took place on the following Friday? A. Why don't you stop on the Friday I seen Richold?
Q. I want to take you through some of the Fridays. A. The following Friday I don't remember what happened.
314 Q. You don't know where you were? A. I was in the store.
Q. And you don't remember what you did? A. That makes me laugh.
Q. Tell us what you did on the following Friday. A. I cannot answer that question.

Q. Yet you know positively this was on a Friday? A. I am quite sure.

Q. And you never talked to anybody about the day? A. I seen Mr. Richold on a Friday.

Q. Did you talk with your sister about the date he was there? A. Mr. Richold was there on a Friday. He came into the store and my sister was in the dining-room. While Mr. Goldberg was talking to Mr. Richold, Mr. Richold says, "Well, I am ready," and he went to work and tore up a piece of paper from the case and wrote that himself—Mr. Richold; and Mr. Goldberg called my sister in, and he laid down the paper—a small piece of three-cent tablet; a small piece of paper—and he laid it down on the counter and she signed it, and that was the last. She signed it and went in the dining-room.

Q. She went right back in the dining-room as soon as she signed it? A. As soon as she signed it.

Q. How long was she there? A. A few minutes. She
315 just came in and it lay there a few minutes and she signed it.

Q. And went right out? A. And went right out.

Q. You got ahead of my question a little. Didn't you talk with your sister about this date? A. Of that Friday?

Q. Yes. Did you talk with her since this suit has been filed about the day Mr. Richold called? A. No, sir.

Q. Did you talk to Mr. Goldberg about it? A. No, sir.

Q. Nothing was mentioned in the family? A. No, sir; not to me.

Q. Did you see the receipt, or have you read the receipt, or the order given by Mr. Goldberg to Mr. Richold to sell the property? A. What?

Q. Have you read the receipt or order given by Mr. Goldberg to Mr. Richold that you say was signed on that date? A. No, sir.

Q. Have you seen it at all? A. I have seen the paper when he made it out himself.

Q. Have you seen the paper since? A. No, sir.

Q. It has never been shown to you? A. No, sir.

316 Q. How do you know it was on Friday? A. Well, it was. Friday was the day.

Q. Suppose the paper did not bear date on Friday, what would you say then? A. It was made out on Friday. The day was Friday; the date was Friday.

Mr. FIELDS: I suggest that the paper itself does actually bear date on Friday—on the 11th of May, 1900, which was Friday.

Q. You are quite positive you never talked with Mr. Goldberg nor with Mrs. Goldberg, nor with her attorney here, Mr. Fields, or with your brother Louis, about the day that paper was signed? A. No, sir.

Q. Neither one of them? A. No, sir.

Q. And you remember distinctly it was Friday? A. I do, sir; yes.

Q. How did you know that this man Richold was Mr. Richold if

you didn't know him before this deal; how did you know his name? A. I heard Mr. Goldberg call him by name.

Q. What date was that? A. On Friday.

Q. That was on Friday? A. Yes.

317 Q. That is the first time you heard Mr. Goldberg call him by name? A. Yes; the first time I seen him.

Q. That is the first time you saw him? A. Yes.

Q. How long was Mr. Richard present when this paper was signed? How long did it take him to draw it up and have it signed? A. It didn't take him so long.

Q. Was he there a half an hour altogether? A. Inside of a half an hour or so.

Q. Were you standing in the arch all this time? A. I was standing in the arch and looking in the store.

Q. Did any customers come in during this time? A. No, sir.

Q. What time of day was it? A. I cannot tell you what hour.

Q. Was it in the morning? A. I cannot tell you, sir. When I tell anything I want to be sure of it.

Q. You don't know whether it was morning or afternoon? A. I cannot tell you what hour. If I knew the hour I would tell you. I cannot tell you what hour.

Q. Was it a rainy day? A. No, sir.

Q. It was clear? A. Fair.

318 Q. No clouds at all? A. I didn't look out.

Q. Was it clear? A. A fair day.

Q. Was the sun shining? A. It was a fair day. There was no sun. I mean a fair day. You know how it is that time of the year.

Q. Was the sun shining or was it not? A. I cannot tell you, to save my life.

Q. And you are positive it was not raining? A. No, sir.

Q. Where is the arch you say you were standing in? Between the two stores? A. Yes.

Q. Where is the counter at which this paper was signed? A. It was in 1247.

Q. Where was that counter? A. On the south wall.

Q. On the south wall? A. Yes.

Q. That store is about sixteen or seventeen feet wide? A. I haven't measured it; I don't know what it measures.

Q. Was he standing directly opposite the arch? A. At the end of the counter facing the arch. The arch is just like this, and there is the counter. There is the corner (indicating).

319 Q. You say the arch is in the middle of the store and between the two stores? A. Yes.

Q. And the counter is on the south wall? A. Not in the middle of the store. The arch is in the middle.

Q. The arch is in the middle wall between the two stores? A. Yes; it is.

Q. Of 1247? A. Yes; between 1247 and 1245.

Q. And the counter at which they signed this paper and where they were talking is on the south wall of 1247? A. Yes.

Q. Now, answer me this question: Look at that (indicating the arch on this paper). Was the counter directly opposite the arch where they were standing or was it farther east or west (indicating on a diagram)? A. Facing the arch.

Q. They were directly opposite the arch? A. Yes.

Q. And you don't know how many feet the arch is from the counter? A. You want to know exactly?

Q. As near as you can tell approximately. A. About eight feet.

320 Q. About eight feet? A. From the arch.

Q. Were they standing with their backs or their faces to you? A. Half way. Mr. Goldberg was in between, and Mr. Richold was at the end of the counter.

Q. You say in your examination-in-chief that they were about ten or eleven feet from you. A. Didn't you ask me how far, and I could not give you the exact measurements? I said about eight feet or more. If you give me a chance to measure, I can tell you.

Q. What is your best recollection? A. The best recollection is the measurement.

Q. What is your best recollection? A. If you give me a chance. Maybe it is eight or nine feet. If you want to know, give me a chance to measure it.

Q. It might have been ten or eleven feet? A. I cannot tell you. Give me a chance. If I measure it, I will give it to the thousandth part of an inch.

Q. Now, you say you heard the conversation at the time they were standing there, and they were standing there talking in relation to the matter nearly a half hour? A. Yes.

Q. What did they say while they were talking there? Do
321 you know anything they said at all? A. Yes.

Q. What did they say? A. Mr. Richold asked Mr. Goldberg how many feet front, and Mr. Goldberg told him, and he says, "Mr. Richold, part of the lot runs to the alley;" and Mr. Richold answered Mr. Goldberg, "That is all right; I will find everything in the deed," like that (indicating by shaking his hand), and there the conversation was closed when he answered him, and Mr. Richold bid him good day and went out.

Q. That is all they said? A. He says, "Part of the lot belongs to the alley;" and Mr. Richold said to Mr. Goldberg, "I will find everything in the deed," like that (indicating); and he says, "Yes; you will find it." That is the entire conversation.

Q. That is the entire conversation? A. Yes; during the time I was there; and then he went out.

Q. You say you didn't hear any more of the conversation? A. No, sir.

Q. That is all the conversation? A. That is all inside of a half hour; that is, making out a little paper and the conversation.

Q. You say before he came with this paper you saw him come there on a Sunday. Did you hear Mr. Goldberg talking with
322 Mr. Richold then? A. No, sir.

Q. You saw them together? A. He was there on a Sunday with Mr. Richold before this paper was made out, and I was in the store of 1245. They came in, the two, Richold and Jake, and Mr. Goldberg was at 1247 and I was at 1245, fixing up stock, after Saturday night, that was upset.

Q. You didn't hear any talk between Goldberg and Richold then? A. Not at that time.

Q. What did they do after Mr. Richold and Mr. Shappirio reached there? Did they stay in the store? A. No; Mr. Goldberg was in the store and Mr. Richold and Jake went upstairs.

Q. And Mr. Goldberg stayed downstairs? A. Yes.

Q. He didn't go upstairs? A. No, sir.

Q. Did he stay in the entire time they were there? A. Yes.

Q. He didn't go out of the store at all? A. No, sir.

Q. Now, why did they go upstairs alone? A. I don't know, sir.

Q. What time in the morning was that? A. I cannot tell you what hour it was.

Q. Did you hear Mr. Richold read the paper? A. What
323 paper?

Q. That you saw your sister sign? A. Yes.

Q. How long did it take him to read it? A. A few minutes.

Q. You heard every word distinctly? A. Well, I cannot tell exactly.

Q. Well, what did he do with it after he read it; did he hand it to Mr. Goldberg? A. No, sir.

Q. What did he do with the paper? A. He kept it.

Q. Well, how could your sister sign it if he kept it? A. You asked me if it was signed.

Q. Did he read the paper to Mrs. and Mr. Goldberg before they signed it? A. She signed it and then she went out in the dining-room. He read the paper before she left and then that was all over and he took the paper. I heard the conversation, if you will trace it back, about where the lot runs; and he went out.

Q. You say that Mr. Richold prepared this paper; wrote it himself? A. Yes.

Q. On the counter, did he? A. Yes.

324 Q. Then, did he read it as soon as he got through writing it? A. After it was signed.

Q. Then he read it? A. Yes; and went out.

Q. You say it was not read until after it was signed by both of them? A. Yes.

Q. You are positive of that? A. Yes.

Q. What time of the day was it when they came to the store on Sunday? A. I cannot tell you what hour it was.

Q. Was it in the morning? A. It was in the forenoon.

Q. It was in the forenoon? A. Yes.

Q. Was it nearer twelve than six? A. I cannot tell you, sir; before noon cannot be six.

Q. Was it nearer twelve in the forenoon or six in the forenoon? A. Daybreak?

Q. Yes. A. It was not near daybreak, by a long piece.

Q. Was it closer to six or twelve o'clock in the morning? A. I cannot tell you. It was in the forenoon.

325 Q. That is all you know about it? A. Yes.

Q. How long did they stay there? A. They stayed there until they went upstairs, and they came in the store again.

Q. How long altogether? A. I cannot tell you that. I was working at 1245, straightening up stock after Saturday night's upset.

Q. You didn't pay any attention to them at all? A. No, sir.

Q. Did you see them in the back yard of the property on that day, Sunday? A. No, sir.

Q. They could have gone there and you would not have known it? A. There are plenty of windows there to see.

Q. Would you have known it if they had gone into the yard? A. If I seen them I would have known it.

Q. Would you have seen them if they had gone in the yard? A. If I was in the yard I would.

Q. How many windows are there in 1245, looking into the back ward? A. There is only one window looking one way and there are three at the back part.

Q. Now, look at this photograph I show you, which is marked Exhibit "C," and tell me if you recognize that as the back
326 yard (handing photograph). A. (Witness examining photograph.) No, sir (witness smiling); that ought to be taken right.

Q. That is not right? A. It is right to you.

Q. Do you recognize any part of that back part of the house as being the premises? A. I cannot.

Q. You cannot recognize anything? A. No, sir; not on that picture.

Q. Do you recognize that fence there (indicating)? A. I do not, sir; not on that picture.

Q. You never saw that fence before? A. On the ground I saw it.

Q. Do you recognize that as the picture or photograph of the fence you helped to build? A. No, sir.

Q. It is not a part of it? A. That is only a picture.

Q. I will repeat that again. Do you recognize this photograph, which has been testified in this case to be a true and correct photograph of 1245 and 1247 11th street, as representing a photograph or picture of the rear of those two buildings? A. I do not.

Q. You don't recognize it? A. No, sir.

327 Q. If you were in the store of 1245 could you see any one in the back yard of the store or house of 1247? A. Providing if I go out in the back building of 1245.

Q. But I asked you if you were in the store of 1245 and there were persons in the back yard of 1247, could you see them? A. Which way?

Q. Through the windows or anyway, without going out of the store? A. Could I see them?

Q. Yes. A. If they were to come between the buildings.

Q. If they were in the yard of 1247 you could not see them? A. No, sir.

Q. You said a while ago they did not look over the property, because if they had you would have seen them. In your testimony-in-chief, "You don't know whether they looked over the property?" and your answer was, "No, sir; I don't know anything about that, because I was in 1245." A. Yes.

Q. That is correct, is it? A. Yes; I guess it is.

Q. You say Mr. Goldberg did not show them around that
328 day. How do you know that? A. Because he was at 1247 and I was at 1245. He was in the store.

Q. And you saw him there the entire time? A. Yes.

Q. What was he doing? A. He was fixing up the stock.

Q. And he didn't leave there? A. No, sir.

Q. Who else did you see around this property prior to the sale? A. Nobody; and you asked me the parties—Jake and Richold on the Sunday before the sale, and on Friday, to sign the paper, Richold.

Q. Do you know a man by the name of Galloway? A. No, sir.

Q. You never saw the man? A. I never saw the man in my life.

Q. Did Mr. Shappirio come there with any man besides Mr. Richold? A. No, sir.

Q. He did not? A. He did not.

Q. What was in that yard of 1247 during the interim between the time that Mr. Richold and Mr. Shappirio came there on Sunday and the time that the paper was signed? What was in the back yard of 1247? A. What do you mean?

329 Q. What was in there; what property was in there; what was it used for? A. What do you mean?

Q. You understand my meaning, surely? A. I don't know what you mean.

Q. What property was in the yard? A. The stable.

Q. The stable was there? A. Yes.

Q. What was in the stable? A. Different stuff.

Q. Was there anything in the yard at all? A. No, sir.

Q. Were there any chickens in the yard? A. No, sir.

Q. Were there any ducks? A. No, sir.

Q. And no animals of any kind? A. No, sir.

Q. Was there a dog there? A. No, sir.

Q. Was there a dog on the premises at all? A. No, sir.

Q. Was there a goat there? A. No, sir.

Q. What became of the dog that was there; that you used
330 to have? A. What dog have you reference to?

Q. Didn't you own a white dog? A. No, sir.

Q. You never did? A. No, sir.

Q. Did you ever own any dog? A. I did.

Q. When did you own a dog? A. I owned a dog on D street.

Q. And never owned one since? A. No, sir.

Q. Whose dog was it that was kept around the house at 11th street? A. There was no dog there.

Q. Was there ever a dog kept there while you lived there? A. No, sir.

Q. Now, Mr. Roginski, Mr. Galloway, a man that is of high standing, responsible in every way and a large property-owner, has testified in this case that you went with him and Mr. Shappirio and showed them through this property, and that you had a dog in the back yard or that there was a dog in the back yard at the time, and that you called his attention to this dog and told him to look out for it. I want to know if you mean to say that that is positively false, and that there was no dog there at that time or at any
331 time, and that you did not show them the property.

Mr. FIELDS: I object to the form of the question because it states as facts matters which are not in evidence in the record.

A. No, sir.

Q. There was no dog there? A. No, sir.

Q. And you didn't show them the property? A. No, sir.

Q. Was there a dog kept at this property 1247 or 1245 by the family of Mr. Goldberg at any time while you were there employed? A. No, sir.

Q. Was there a dog kept there by you or any one who occupied the premises or connected with the premises? A. No, sir.

Q. While you were there? A. No, sir.

Q. Was there a dog of any person's left there at any time during the month of May, 1900? A. No, sir.

Q. I forgot to ask you—I was not present at the time you gave your testimony-in-chief—in what way you were sworn to testify in this case? A. In what way?

Q. Were you sworn under oath or by affirmance? A. Under oath I was.

332 Q. What church do you attend? A. Well, I go to the 6th Street church when I go.

Q. What church is that? A. That is a synagogue. I don't know the name of it; but it seems I like all the churches.

Q. Do you swear on the seven books or do you affirm? A. I swear just what you make me swear to, as the truth.

Q. Have you ever been a witness in a case before? A. No, sir.

Q. And you never were? A. No, sir.

Q. You never were put under oath before? A. Except for good old Uncle Sam. Here it is (witness offering paper to counsel). Character excellent. I must be a good man.

Q. I don't want to read it. What does that represent? Is that a discharge from the army? A. I told you to read it and you said you didn't want it, and it goes back in its place.

Q. What does that paper represent; what is it? A. I asked you to read it.

Q. I don't care to read your paper, but I ask you what it is. A. You ask me if I ever swear, and I said for good old Uncle Sam and you said you didn't want it.

333 Q. Whom did you swear before? A. At the Washington barracks under Captain Lucien, if you know the gentleman.

Q. What did you swear to? A. In what way?

Q. You say you swore before this gentleman. What did you swear to? A. That I will do my service honest and truthful, and I did. That showed it; a United States paper (indicating).

Q. Did what service? As a soldier? A. Yes.

Q. How long were you in the army? A. I was in the army seven months and twenty-seven days.

Q. What army was that? A. The United States army.

Q. Were you engaged in service? A. What do you mean?

Q. In the war—in a battle? A. No, sir.

Q. You never were in service in a battle? A. No, sir.

Q. Why were you in the army only seven months? A. Because I was in for three years, and after the war was settled they would give me an honorable discharge, and I got it.

334 Q. That was during the Spanish-American war? A. Now you'r- talking; yes.

Q. Who else was around the store and house during the month of May, in which this property was sold, other than yourself? A. What do you mean?

Q. Who else was around the house? A. On the day of what? Sunday or Friday?

Q. Say a week prior to the Sunday and a week subsequent. A. Before?

Q. Yes. A. I cannot remember.

Q. Was anybody employed there? A. What do you mean? To work?

Q. Yes. A. No, sir.

Q. And your brother Louis was not in the city at that time, was he? A. No, sir.

Q. And you were the only person there other than Mr. Goldberg, Mrs. Goldberg, Mrs. Goldberg's mother and the child? A. Yes.

Q. There was no other person present except those? A. Yes; that is all.

335 Q. Now, when you go out into the back alley of this stable of 1245, the alley that is back of the stable of 1245, how can you get in there from the back; do you have to have a key to unlock the gate? A. Of the stable?

Q. Of 1245? A. Do you have to have what?

Q. Do you have to have a key? A. No, sir.

Q. How do you get in? A. You go from 1245 to the alley and go into the stable of 1245 and take off the wooden bar across.

Q. I mean this: Suppose you are in the alley of 1245 in the rear, how can you get into the stable? A. By going to the front and leaving the stable door open.

Q. You cannot get into the stable from the back? A. If you go out and come in.

Q. How can you get in if it is fastened? A. You can put a lock on it.

Q. Assuming you would have gone through the alley in the rear of 1245 on about May 11th, 1900, how could you have gotten through that stable into the back yard of 1245? A. By taking the bar off and opening the door and going out.

Q. You could open the door from the rear? Could you open the stable door from the alley? A. Yes.

336 Q. Did you ever talk with Mr. Shappirio about this property? A. No, sir.

Q. Did you ever talk to anybody about it? A. No, sir.

Q. Who told you to build the fence there? A. My sister.

Q. Your sister told you? A. Not me. She got the lumber. She bought the lumber and told my brother to put up the fence, and I helped.

Q. When did you first know that Mr. Goldberg, as he claims, did not own the yard and stable in the rear of 1247? A. I didn't know it at all.

Q. You never did know it? A. No, sir.

Q. You always thought it belonged to him? A. I didn't know anything about it.

Q. It was always a part of that property? A. There was a yard there, but I didn't know anything about it.

Q. Did you ever hear him say he didn't own it? A. To Richold. He said there was one part of the lot won't run out to the alley.

337 Q. And he told Mr. Richold he didn't own it? A. Yes; at the time.

Q. He said, I don't own this property? A. He says, "Part of the lot runs out to the alley."

Q. And the other part? A. Mr. Richold says, "Everything I will find in the deed, how many feet there is."

Q. Did he tell Mr. Richold he didn't own the other part? A. He says, "A part of the lot runs out; a part of the lot does not belong to it," and he says, "I will find it in the deed" (shaking his hand in imitation of Mr. Richold).

Q. Where was he when he told him this? A. In the store.

Q. You say Mr. Richold brought a sign there. What did it look like? A. Mr. Richold came in with papers under his arm. Mr. Goldberg was not in the store. He was in town, and sister and I were in the store, and he came in. And he says, "I want to put up a 'for sale' sign, on the property."

Q. He didn't put it up? A. Listen to me.

Q. I didn't ask you to tell me all about what he said. You answer my question now. A. Go ahead.

Q. I asked you what kind of a sign it was. A. A "for sale" sign.

338 Q. Did he put it up? A. No, sir.

Q. Did he take it away? A. Let me explain why he didn't. Sister said, "Mr. Richold, what are you going to do?" "I am going to put up a for-sale sign." And she said to Mr. Richold, "We have a good bit of money standing out, and if you put up a for-sale sign we have no way of getting the money." And he says, "Shap-

pirio wants to make a thousand dollars on the property," just like that. And when she asked him not to put it up he went out, and he says, "Shappirio wants to make a thousand dollars off the sale."

Q. You say if Mr. Shappirio and Mr. Galloway had gone through the yard or through the rear of the place you would have known it? A. They were not there at all.

Q. They were not there? A. No, sir.

Q. You said in your testimony-in-chief you supposed you would. What did you mean by that? A. If they were, but they were not there at all.

Q. You are not so positive, then? A. I am positive if they were there I would know it, and they were not there at all.

Q. How much money did your brother make while he was carrying on business there and supporting the whole family? A. Give me that big paper and I will figure it (indicating). I cannot
339 tell that. This here is not big enough (indicating). I haven't got enough books to figure it out upon.

Q. Do you know of any person who had served provisions to the family? A. We were altogether.

Q. Do you know any store or any grocerman who served provisions to the family? A. They used to buy it for cash.

Q. They paid cash for everything they got? A. Yes.

Q. And didn't owe anybody anything? A. Not for eating.

Q. You are positive of that? A. I am, sir.

Q. Where did you get the stuff from with which to build the fence? A. My sister ordered it and paid for it. It was fetched there to put up the fence.

Q. She ordered it herself? A. Yes.

Q. Where from? A. I don't know which place she ordered it from.

Q. It was hauled there in a wagon by a lumberman? A. Yes.

Q. Who put the goods in the shed that are in there now? Who stored them in there? A. They have been there all the time.

340 Q. There are no more goods in there now than there were in there when you went there to work? A. The same goods.

Q. The same goods there all the time? A. Yes.

Q. Do you know your brother was terribly in debt when he left the city? A. I do not.

Q. When did he leave the city? A. I cannot tell you.

Q. He did leave the city? A. He did.

Q. How many years ago? A. I cannot tell you.

Q. Was it one year? A. I cannot tell you.

Q. Two years? A. I cannot tell you.

Q. Was it three years? A. I cannot tell you.

Q. Four years? A. I cannot tell you.

Q. What is he doing now? A. He is travelling with a show.

Q. A theatrical company? A. Yes.

Q. How long has he been there? You don't know that.
341 A. No, sir.

Q. Did you ever give your sister, Mrs. Goldberg, any dresses? A. No, sir.

Q. You never did? A. No, sir.
Q. She never asked for any, did she? A. No, sir.
Q. What is the amount of money that is taken in at Mr. Goldberg's store a day?

Mr. FIELDS: I object to the question as being immaterial, and, furthermore, I am bound to instruct the witness he need not answer the question, and, furthermore, he ought not to answer it.

A. I won't answer it; personal affairs.
Mr. SIMMONS: I will give the attorney for the defendant the object for this question and then see if he still instructs him. The object of the question is to show that the defendant Minnie Goldberg had access to certain sums of money, and the purpose of the question is to show how much and what was taken into the store, and to show how much, to the court, she had access to, and the amount her husband was receiving and earning from his business.
Mr. FIELDS: I shall still object unless counsel will follow up the matter with proof of the fact that she actually took or received the money in question.
Mr. SIMMONS: She said in her testimony she had access to
342 the drawer and took money whenever she pleased.
Mr. FIELDS: Her testimony related entirely to the store No. 600 H street northeast.
Mr. SIMMONS: She said, In the store. She said her store. That is her testimony. Now, I want to know how much money she had access to and how much money was coming in from the business which she said was hers as well as his.
Mr. FIELDS: Counsel for the complainants evidently labors under the conclusion that the witness is employed in the store 600 H street northeast, whereas the fact is this witness is employed at another store conducted by Mr. Goldberg on 11th street southeast.

Q. I will ask you how much money was taken in at the 11th Street store during the time you say you were clerking there. A. That was after the sale.
Q. Before or after the sale? A. It was not before the sale.
Q. You didn't clerk for him before the sale? A. Not at the store I am now. Mr. Simmons, correct yourself. It was after the sale. You ask me that question, and I will answer you. You asked me how much money was taken in when I was clerking for him.
Q. Clerking at the stores 1245 and 1247. A. I was not receiving
the money. You asked me how much money I am taking
343 in now, but it is a different store.
Q. I didn't say that. A. You said how much money I take in. If you ask me the question how much money was taken in in that store, well, that is a different store altogether.
Q. I asked you, in the past tense, how much money was taken in at Mr. Goldberg's store. A. What store have you reference to?
Q. 1245 and 1247 11th street—every day. A. How could I know. I didn't handle the money.

Q. Can't you approximate it? A. It was not my business. I was in his employ. If you were in employ, would you tell the confidential business—what they took in a day?

Q. Did they take in $10 a day? A. I don't know how much is taken in.

Q. More than ten? A. I don't know how much. If I made a sale, I gave it to him or her.

Q. You didn't put it in the drawer? A. No, sir.

Q. Every time you made a sale you gave it over to him or her? A. I took in the money when I made a sale.

Q. What was the amount of the sales or the biggest sales you made any day during the month of May? A. I cannot tell
344 you, and I won't tell you. That is private business altogether. That is out of the line of the case.

Q. You decline to answer that? A. I do.

Q. Awhile ago you said Mr. Goldberg told Mr. Shappirio that the property at the rear of 1247 did not belong to the house? A. He did not tell Mr. Shappirio. He told Mr. Richold.

Q. He told Mr. Richold? A. Yes.

Q. In this testimony is the following: "Was anything said in this conversation about the ground and stable in the rear of 1247? A. No, sir. Q. Nothing whatever? A. No, sir. Q. They never said a word? A. No." What did you mean by that? A. What?

Q. Was this testimony you gave here true, or the testimony you gave a while ago true? A. The testimony I gave a while ago and that testimony is true.

Q. They are both true? A. Yes.

Q. If he said nothing whatever about this back yard not being his property, how can it be true he did say something about that it is not his? A. What is that?

345 Q. If he told nothing about it—you say in your testimony-in-chief he said nothing about this back yard not belonging to him? A. Yes.

Q. And now you say he did tell Mr. Richold that it did not belong to him. Which is the truth? A. Both of them.

Q. Both are true? A. Yes.

Q. If he said nothing whatever about this back yard not being his property, how can it be true he did say something about it that it was not his? A. What is that?

Q. If he said nothing about it—you say in your testimony-in-chief you said nothing about this back yard not belonging to him? A. Yes.

Q. And now you say he did tell Mr. Richold that it did not belong to him. Which is the truth? A. Both of them.

Q. Both are true? A. Yes.

Q. What words did he use? A. Just what I am telling you.

Q. What did he say? Repeat that for me. A. He said a part of the lot runs to the alley, and that part does not belong to
346 him, and Mr. Richold said, shaking his hand, "Never mind"——

Q. What lot did he say? A. I suppose 1247.
Q. When was he then when he said 1247? A. In the store.
Q. Did he point to the lot? A. Yes; he said part of the lot.
Q. Did he point to the lot? A. Yes.
Q. How often did you talk with Mr. Shappirio about this property? A. Once.
Q. When was that? A. That was the time he came up to the store at 1217 11th street. He ran into the store and he says, "I have bought that property cheap enough, without that stable." He said, "If if costs me $1,000 I will take that stable away from him." I said, "Hold on; take it cool;" and he took out a box of cigarettes. I said, "Take it cool and give me a smoke," and he gave me a smoke and ran out, and that is the last I spoke to Jake. He said he would get it if it cost him $1,000.
Q. He said he would get it if it cost him $1,000? A. Yes; he said he bought the property cheap enough.
Q. Where was that? A. 1217 11th street.
347 Q. When? A. After the sale. I don't know how many weeks. I cannot remember. It was a short time after the sale.
Q. Did you say anything to him about the property? A. I didn't say anything at all.
Q. How did he come to say that? A. He ran into the store. I was facing—my back to the door. I seen somebody run in. I turned around and he run in and he said, "I bought that property cheap enough without that back stable." He used the word "back," but I didn't say it before. He said, "If it costs me $1,000 I will get it back." I said "Take it cool," and he pulled out a box of cigarettes and gave me a smoke. And he started out and that was the last I saw of him.
Q. Mr. Goldberg was not there that day? A. No, sir.
Q. Did you ask for Mr. Goldberg? A. No, sir.
Q. He knew Mr. Goldberg was not there, did he? A. I don't know, sir.
Q. And he didn't mention Mr. Goldberg's name? A. No, sir; he did not.
Q. How did he know Mr. Goldberg was not at the place? A. I don't know.
Q. He did know it? A. I don't know.
348 Q. Who else was in the store then? A. This man right here, Isaac (the witness indicating himself).
Q. Nobody but you? A. Nobody but this man right here (witness indicating himself.)
Q. You say you never saw any goats at the back of this property? A. No, sir.
Q. You never saw one? A. I saw goats all around on the other side.
Q. Did you ever own a bull-dog in your life? A. No, sir.
Q. Did you ever own any dog? A. At one time.
Q. When was that? A. On D street years and years ago.

Q. Do you own a dog now? A. No, sir.

Q. What were the mechanics doing there? You say you saw mechanics there? A. I saw two.

Q. What were they doing? A. Painting the roof.

Q. Both of them painting? A. Yes.

Q. When was that? A. I don't know what day it was or
349 what day of the month.

Q. How long after the sale was it? A. A few weeks after, but I don't remember what week it was.

Q. Did you see them come there before that at all? A. No, sir.

Q. You didn't see them come at all and didn't know they were there until you saw them on the roof? A. I might have through the trap-door.

Q. What did they say their names were? A. They didn't say their names. They went up with two buckets of paint.

Q. Painters? A. Yes.

Q. You say the areaway between these two stores is paved with concrete? A. Yes.

Q. What do you mean by concrete; what kind of concrete? A. Made out of tar and fine gravel.

Q. What they call alphaltum? A. Yes.

Q. You are sure of that? A. Yes.

Q. How do you know your sister got $7 a week at Lansburg's? A. She told me.

350 Q. That is all you know about it? A. Yes, sir.

Q. You don't know anything about what she received other than what she told you? A. That is all.

Q. Do you or do you not? A. What?

Q. Do you know anything about what she received from Lansburg's or Baum's other than what she told you? A. Just what she told *you*.

Q. How do you know your sister was not under any expense for clothing, &c? A. Because my brother used to buy it for her.

Q. How do you know he did? A. I was there in the house and she told me what he bought.

Q. He told you? A. She told me.

Q. You only know it from what she told you? A. He would give her the money to dress.

Q. You never gave her any? A. I would give her some money.

Q. How many dresses would she buy a year? A. I don't know.

Q. You say you know she had money when she married Mr. Goldberg? A. Yes.

351 Q. How do you know that? A. Because I seen it. She had it at home in her trunk and she showed it to me.

Q. She showed it to you? A. Yes.

Q. That was after she married him? A. Yes.

Q. How long after she married him? A. I don't know how many months it was afterwards, but she showed it to me. She had it at home in her trunk.

Q. How much was it? A. About $500; maybe a few dollars more.

Q. She counted it out to you? A. Yes.
Q. Took it and counted it out? A. Yes.
Q. What kind of bills was it in? A. I cannot remember.
Q. Why did she count it out? A. She showed it to me.
Q. Had she ever shown it to you before? A. She never showed it, but she counted it that way.
Q. She counted it that day? A. Yes; she said she had $500.

352 Q. How much money did Mr. Goldberg give her when he married her? A. Nothing.
Q. He never gave her money? A. No, sir.
Q. How do you know? A. Because I know he never gave her no money.
Q. How do you know it? Nobody asked her the question how much money he gave her? A. No. He never gave her any money.
Q. How do you know? A. I cannot prove it. I never saw him give her money.
Q. You never saw him give her any money? A. No.
Q. He might have given her money and you would not have known it? A. I don't know.
Q. She never bought anything at all with her own money while she was living with your brother? A. Little things.
Q. She did spend money for little things? A. Yes; just little knick-knacks a girl needs.
Q. But she spent her money for little things when she needed them? A. Yes; ordinary things.

Redirect examination.

By Mr. FIELDS:

353 Q. Since Mr. Goldberg moved away from the 11th Street property, where have you been clerking? A. At 1217 11th street southeast.
Q. Whose store is that? A. Mr. Goldberg's.
Q. Have you ever clerked in a store, 600 H street northeast? A. No, sir.
Q. Did Mrs. Goldberg hear Richold read the paper on the Friday after she had signed it?

Mr. SIMMONS: I object to that question on the ground it is leading.

A. Yes.
Q. Did you know Mr. Shappirio when he worked for Cohen in 1247? A. Yes.
Q. Did you ever visit him there? A. Yes; I used to come up there on Sundays and play a little cards with Jake and Cohen and a few more.
Q. Where would you play cards? A. At 1247.
Q. Did you ever play in the yard back of 1247? A. We played upstairs in 1247. There was no yard there at all. It was just a fence. Just a fence was there.

Q. Did you ever play cards between the building and fence? A. In the summer time we did.

354 Q. How well have you known Mr. Shappirio since he has been here? A. From the first day he landed.

Q. Were you very intimate with him? A. No, sir; good friends.

Q. Did Mr. or Mrs. Goldberg read the paper before they signed it on the 11th of May, 1900? A. That small paper?

Q. Yes. A. No, sir.

Q. Did anybody read it except Richold? A. Richold.

Q. In May, 1900, could you get into the stable of 1245 from the alley? A. Yes.

Q. How could you get into the stable of 1245 from the alley? A. From outside of the alley?

Q. Yes. A. You mean going through the gate?

Q. If you were on the ground back of the stable 1245 could you come into the 1245 stable? A. Yes.

Q. Could you unlock it from the outside? A. Yes.

Q. How would you unlock it? A. That bar, you know,

355 you could lift it up and come right in.

Q. Could you open the door from the outside? A. Coming in?

Q. Being out. A. Being out; no.

Recross-examination.

By Mr. SIMMONS:

Q. How often did you go to see Mr. Shappirio at Cohen's place? A. I used to go there now and then on Sundays pretty often.

Q. Did he live there with Cohen? A. Yes.

Q. That was before he was married? A. Yes. He was clerking there.

Q. How long was he away from there when he left Cohen's? A. What?

Q. When did he leave Cohen's and go to work elsewhere? A. He was working there at the time.

Q. You say you left here when you were very small and went to Pittsburg? A. Yes.

Q. And when you came back you went to work for him—Mr. Shappirio? A. You asked me if I was working for him?

356 Q. Whom did you work for when you came back from Pittsburg? A. My uncle.

Q. Who is he? A. Roginski. He came to town and he stayed around and he went to work for Cohen.

Q. How long did he work for Cohen? A. I don't remember.

Q. How long has it been since he worked for Cohen? A. I cannot tell you.

Q. How many years? A. I don't know how many years.

Q. It was before Goldberg and your sister were married? A. Yes.

Q. Long before that? A. Yes.

Q. Was it as much as five years before your sister was married? A. I don't remember. It was years back.

Q. The store at 1217 11th street is owned by Mr. Goldberg? A. Yes.

Q. How long has he owned that? A. I believe in the first of May.

Q. Last? A. Yes.

357 Q. Last year? A. Yes.

Q. He took that place when he moved away from 1247? A. Yes.

Q. And he runs the store 600 H street? A. Yes.

Q. And you run his place on 11th street? A. Yes.

Q. What do you do with the money from the store? You take charge of that store exclusively? A. Yes.

Q. And turn the money in to him every night? A. No, sir.

Q. Does he come for it? A. No.

Q. You take it to him? A. Yes.

ISAAC ROGINSKI,
By J. A. SWEENEY,
Examiner in Chancery.

It is agreed that the examiner sign the depositions on behalf of the defendants for the witnesses.

Mr. FIELDS: I announce the testimony on behalf of the respondents closed.

358 EXHIBIT DEFENDANT- No. 1.

This indenture made this sixth day of February, in the year of our Lord one thousand eight hundred and seventy-nine between Samuel Cross, R. Ross Perry and Judson T. Cull of the city of Washington, in the District of Columbia, assignees, of the first part and George Goldberg of the same place of the second part:

Whereas by a certain deed bearing date on the twenty-fourth day of August A. D. 1877, and duly recorded on the seventeenth day of September, A. D. 1877 in Liber No. 866 at folio 237 *et sequitur*, one of the land records of the District of Columbia Thomas Edward Clarke and Company and Thomas Edward Clarke and his wife and Thomas B. Cross and his wife, conveyed and assigned to the said parties of the first part, all of their real estate located in the city of Washington in the District of Columbia in trust to sell and convey the same for certain purposes, all of which are fully expressed and will appear at large by reference to the said deed.

And whereas the said parties of the first part in pursuance and by virtue of the said assignment did expose at public sale the hereinafter-described lot or parcel of land, comprising a portion of the said real estate conveyed and sold the same to the said George Goldberg at and for the sum or consideration hereinafter expressed and set forth. And the said George Goldberg having complied with

the terms of the said sale is entitled to a conveyance of the said lot or parcel of land.

Now therefore this indenture witnesseth that the said parties of the first part for and in consideration of the premises and
359 further the sum of six hundred and twenty-one dollars and fifty-five cents ($621.55) in lawful money of the United States to them in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, enfeoffed, released and conveyed and do by these presents grant, bargain, sell, alien, enfeoff, release and convey unto the said party of the second part, his heirs and assigns forever the following-described real estate situated in the city of Washington in the District of Columbia and known and described on the official plan or plat thereof as the south thirty-four (34) feet by the depth thereof of lot numbered twenty-eight (28) in square numbered nine hundred and seventy-seven (977) together with all the improvements, ways, easements, ways, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest, claim and demand either at law or in equity or otherwise however of the said parties of the first part of, in to or out of the said described real estate and premises, derived under and by virtue of the aforesaid deed of assignment.

To have and to hold the said described real estate and premises and appurtenances unto the said party of the second part his heirs and assigns to his and their sole use, benefit and behoof forever.

In testimony whereof the said parties of the first part assignees as aforesaid have hereunto set their hands and affixed their seals on the day and year hereinbefore written.

[SEAL.] JUDSON T. CULL, *Assignee.*
[SEAL.] SAM'L CROSS, *Assignee.*
[SEAL.] R. ROSS PERRY, *Assignee.*

Signed, sealed, and delivered in the presence of—
J. F. RILEY.

359½ DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

I, J. F. Riley, a notary public in and for the District of Columbia, do hereby certify that Samuel Cross, R. Ross Perry, and Judson T. Cull, assignees, parties to a certain deed bearing date on the sixth day of February, A. D. 1879, and hereto annexed, personally appeared before me in the county aforesaid, the said parties being personally known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed.

Given under my hand and notarial seal this 25th day of February, A. D. 1879.

J. F. RILEY,
Notary Public.

[SEAL.]

I consent to this sale.

DELILAH CLARK,
By W. W. GOLDSBOROUGH, *Attorney.*

Endorsed.

Received for record 9 a. m., February 27, 1879, and recorded in Liber 904, folio 413 *et seq.*, of the land records for the District of Columbia, and examined by—

GEO. F. SCHAYER,
Dep. Recorder.

360 EXHIBIT DEFENDANT- No. 2.

This indenture, made this eighteenth day of September, in the year of our Lord one thousand eight hundred and ninety-six, between George Goldberg, widower, of the city of Washington in the District of Columbia hereinafter referred to as the said party of the first part, and Joseph R. Edson and Charles B. Bailey of the city of Washington, in the District of Columbia, (trustees) hereinafter referred to as the said party of the second part or the said trustees.

Witnesseth, that the said party of the first part, for and in consideration of ten dollars, current money of the United States, to him in hand paid by the said party of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, hath granted, bargained, and sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents doth grant, bargain, and sell, alien, enfeoff, convey and confirm, unto and to the use of the said party of the second part, their heirs and assigns, and to the survivor of them, his heirs and assigns, the following-described land and premises, situate and being in the city of Washington, in the District of Columbia, and known and distinguished as the south thirty-four feet (34′) front, by the full depth thereof, of lot numbered twenty-eight (28), in square numbered nine hundred and seventy-seven (977), together with the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining.

To have and to hold the said land and premises, with the
361 appurtenances and hereditaments to the same belonging, unto and to the use of the said party of the second part or the survivor of them, their or his heirs or assigns.

In and upon the trusts, nevertheless, hereinafter expressed and specified, and none other, that is to say:

First. To secure the full and punctual performance of the condition of a certain bond of even date with these presents, in the penal sum of twenty thousand dollars, duly executed and delivered by the said George Goldberg to John Joy Edson, secretary of the Equitable Co-operative Building Association, of the city of Washington, District of Columbia, which condition is, in substance, that the said George Goldberg by reason of his having on the second day

of September A. D. 1896, purchased and received from said association an advance on two (2) shares of stock therein held by him amounting to the sum of two thousand (2,000) dollars, at a premium of sixty per centum, should, on or before the first Wednesday of each and every month occurring after date of said bond, until the full settlement of said advance and premium, as provided for in the constitution of said association, pay to the secretary of said association ten dollars for premium, sixteen & $\frac{67}{100}$ dollars for return of advance, and five dollars for dues on stock, on account of the said purchase (the said monthly payment on account of premium being subject to annual reduction of one-tenth of the original amount at the end of each year), together with all fines and forfeitures imposed, and all insurance, taxes, and expenses, with interest thereon, paid or expended in consequence of said advance or in protecting any security given for said bond; and should also well and faithfully perform each and every condition of each and every bond hereafter given for any future purchases on stock of said association, made by said George Goldberg within ten years from the date hereof, and to the extent of twenty thousand dollars.

362 Second. And on full performance of the condition of said bond, and of any and all bonds hereafter given, for future advances on stock as aforesaid, to release and reconvey to said George Goldberg, his heirs or assigns, at his or their cost, the said above-described land and premises.

Third. Upon default or failure, for a period of two months, in the performance, in whole or in part, of the condition of said bond, or of any bond hereafter given, for future advances on stock as aforesaid, or in payment and discharge of any cost, charge, expense, taxes or insurance, with interest thereon, arising, incurred, or expended in and about the protection or execution of this trust, at the request, in writing, of the aforesaid secretary, or his successor, to sell said above-described land and premises or so much thereof as may be necessary, with the appurtenances, at public auction, upon such terms and conditions, and at such time and place as to said trustees, or the survivor or trustee acting, shall seem most for the interest of all parties concerned, first giving notice of the time, place, and terms of sale by advertisement, inserted twice a week for at least two successive weeks in some newspaper published in the District of Columbia, and any sale to repeat or postpone from time to time, as to said trustees, or the survivor or trustee acting, shall seem just and advantageous to all parties interested; and upon such sale being made and full compliance with the terms thereof by the purchaser, and without any liability on the part of the purchaser to see to the application of the purchase-money, to convey to such purchaser or purchasers, his, her, or their heirs and assigns, in fee-simple, the land and premises sold, with the appurtenances;

363 and thereupon all the right, title, interest, and estate, legal or equitable, whether in, possession, reversion, or remainder, of the said party of the first part, his heirs or assigns, in and to the same shall cease, determine, and be forever foreclosed.

Fourth. And out of the proceeds of sale the said trustees, or the survivor or trustee acting, shall pay: First, the proper expenses attending such sale or sales, including a commission on the gross proceeds of five per centum as compensation to said trustees for executing this trust. Second, whatever sum or sums may be found due and owing by said stockholder to said association upon an account to be stated by its secretary to the date of sale, in accordance with the provisions of the tenth section of article XIV of the constitution of said Equitable Co operative Building Association. Third, the balance if any, to pay over to said George Goldberg, his executors, administrators, or assigns.

In testimony whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

GEORGE GOLDBERG. [SEAL.]

Signed, sealed, and delivered in presence of—
HENRY E. COOPER.

DISTRICT OF COLUMBIA, *To wit:*

I, Henry E. Cooper, a notary public in and for the District aforesaid, do hereby certify that George Goldberg, widower, party to a certain deed bearing date on the eighteenth day of September, A. D. 1896, and hereto annexed, personally appeared before me, in the District aforesaid, the said George Goldberg being personally well known to me to be the person who executed the said deed,
364 and acknowledged the same to be his act and deed.

Given under my hand and official seal this eighteenth day of September, A. D. 1896.

[SEAL.] HENRY E. COOPER,
Notary Public.

Endorsed.

Received for record on the 18 day of September, A. D. 1896, at 3.20 o'clock p. m., and recorded in Liber 2158, at folio 250 *et seq.*, one of the land records for the District of Columbia, and examined by—

C. H. J. TAYLOR, *Recorder.*

365 EXHIBIT DEFENDANTS No. 3.

Certificate of Title.

To part of original lot numbered two (2), in square numbered nine hundred and seventy-seven (977), beginning for the same at the northwest corner of said lot and running thence east thirty feet (30′); thence south twenty feet (20′); thence west thirty feet, and thence north to the place of beginning.

I have examined the title to the above-described property, and am of the opinion, from the record, that the same is good in Rufus H.

Darby in fee, subject to whatever taxes, tax sales, and assessments may be due and unpaid.

MILTON C. BARNARD.

$30.50.
October 1st, 1900, 10 a. m.

(Here follows diagram marked p. 366.)

367 EXHIBIT DEFENDANTS No. 5.

(Stamp.)

This indenture, made this twenty-eighth day of September, in the year of our Lord one thousand nine hundred, by and between Rufus H. Darby and Annie F. Darby, his wife, of the city of Washington in the District of Columbia, parties of the first part, and Minnie D. Goldberg of the same place party of the second part:

Witnesseth, that the parties of the first part, for and in consideration of ten (10) dollars, lawful money of the United States of America, to them in hand paid by the party of the second part, receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have given, granted, bargained and sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents, give, grant, bargain and sell, alien, enfeoff, release, convey and confirm unto the party of the second part, her heirs and assigns, forever, the following-described land and premises, situate, lying and being in the city of Washington in the District of Columbia, and distinguished as part of original lot numbered two (2), in square numbered nine hundred and seventy-seven (977); beginning for the same at the northwest corner of said lot, and running thence east thirty feet (30′); thence south twenty feet (20′); thence west thirty feet (30′); and thence north to the place of beginning, together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the parties of the first part, of, in, to or out of the said land and premises:

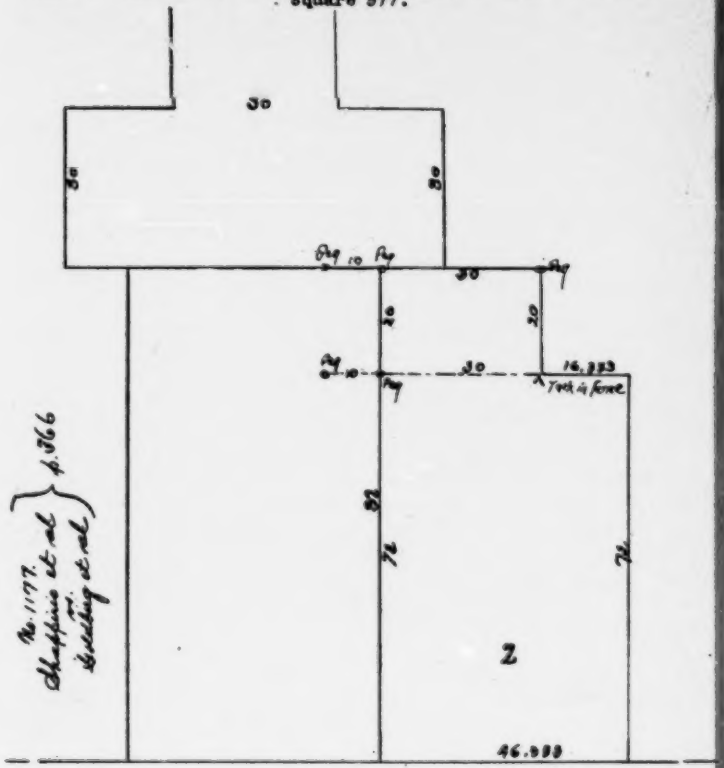
To have and to hold the said land, premises and appur-
368 tenances, unto and to the only use of the party of the second part, her heirs and assigns forever.

And the said parties of the first part, for themselves and for their heirs, executors, and administrators, do hereby covenant and agree to and with the party of the second part, her heirs and assigns, that they, the parties of the first part and their heirs, shall and will warrant and forever defend the said land and premises and appurtenances unto the party of the second part, her heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, or interest therein, by, from, under or through them or any of them.

And further, that the parties of the first part and their heirs shall

EXHIBIT DEFENDANTS NO. 4.

PLAT OF SURVEY of the 30 by 20 feet in the rear of lot 2, Square 977.



N Street South

I HEREBY CERTIFY, That the foregoing plat is correct in accordance with Law and Record. Actual survey made this 4th day of May 1901, for Minnie Goldberg.

HENRY B. LOOKER,
Surveyor, District of Columbia.

and will at any and all times hereafter, upon the request and at the cost of the party of the second part, her heirs and assigns, make and execute all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said land and premises and appurtenances unto the party of the second part, her heirs or assigns, as the party of the second part, her heirs or assigns, or her or their counsel learned in the law shall advise, devise or require.

In testimony whereof, the parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

RUFUS H. DARBY. [SEAL.]
ANNIE F. DARBY. [SEAL.]

Signed, sealed, and delivered in the presence of—

E. J. O. NEILL.
F. W. MAHOOD.

369 DISTRICT OF COLUMBIA, *To wit:*

I, Chas. P. Lee, a notary public in and for the said District, do hereby certify that Rufus H. Darby and Annie F. Darby, his wife, parties to a certain deed bearing date on the twenty-eighth day of September, A. D. 1900, and hereunto annexed, personally appeared before me, in the said District, the said Rufus H. Darby and Annie F. Darby being personally well known to me as the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Annie F. Darby, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her by me, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this 2nd day of October, A. D. 1900.

CHAS. P. LEE,
Notary Public.

[SEAL.]

(Stamp.)

Endorsed.

Received for record on the 4 day of October, A. D. 1900, at 11.30 o'clock a. m., and recorded in Liber No. 2530, at folio 1 *et seq.*, one of the land records for the District of Columbia, and examined by—

H. P. CHEATHAM, *Recorder.*

S. A. B.

370 EXHIBIT DEFENDANT- No. 6.

C 8656.

Office of the assessor, District of Columbia.

#50108. WASHINGTON, D. C., *August* 31*st*, 1900.

Mr. M. C. Barnard, 472 La. Ave. N. W.:

On the following real estate, to wit, part of lot 2, square 977;
Background—on alley;
No other front;
600 square feet, valued at $90; value imp'ts, $—; assessed in 1900 in the name of Rufus H. Darby, there now appears by the books and records of taxes and assessments to be due and unpaid the following assessments of taxes, as hereon certified to by the officers in charge of the respective accounts:

(Seal.) Special assessment office, District of Columbia.

Assessor, D. C.:

I hereby certify that upon the property above described in this certificate the records of this office show the following unpaid assessments for special improvements:
De. Alley assessment: No unpaid special assessment to date.
W. Corporation assessments, ——.
Costs, ——.

J. W. DANIEL,
Special Assessment Clerk, D. C.

No. 117,343.

Engineer department, water office, District of Columbia.

Assessor, D. C.:

I hereby certify that upon the property described in this certificate the records of this office show no assessment to date, with penalty and interest as provided by law.
Sept. 4, rec'd.
371 By order of the Engineer Commissioner:

J. WILL CROSS,
Clerk in Charge of Water Taxes.

Water rent excepted.

General taxes due as follows:
1873, $1.02, F. 383, tax-lien certificate #3361, not held by D. C.
1881, 0.54, " 489, William Clark.
1882, .54, " 498, " "
1883, .54, " 512, " "
1884, .27, " 538, " "
1885, .26, " 527, " "
1886, .27, " 536, " "
1899, 1.35, " 336, Rufus H. Darby.
1900, 1.35, " 22, " "
with penalty and interest thereon, as provided by law.

Office of the Commissioners of the District of Columbia.

WASHINGTON, *August* 27, 1894.

Ordered that the order of July 24, 1894, relative to certified statements of taxes and assessments under act of May 13, 1892, is hereby modified so as not to require the assessor to include reference in said certificates to any sales prior to the year 1878, sales where deed has been executed and delivered by the Commissioners in completion of said sale, and any sales whose omission is requested by the applicant. In case of such omission by request, the certificate shall state on its face, "Tax sales omitted by request of applicant;"
372 also that a copy of this order be printed on said certificates.

By order:

W. TINDALL, *Secretary.*

"H." "L."

Witness my hand and seal of office the 4th day of September, 1900.

Fee, 50 cents, paid.

H. H. DARNEILLE,
Assessor, District of Columbia,
[SEAL.] By I. W. W. GRIFFIN,
Assistant Assessor.

373 EXHIBIT DEFENDANT- No. 7.

1901. Taxes, year ending June 30. 1901.

Tax, $1.50 per $100, assessed value.

Washington city.

Transferred to ——. Folio 84.

Minnie D. Goldberg to the District of Columbia, Dr.

Square.	Lot.	Value of lot.	Value of improvements.	Total assessed value.
977	of 2	$90	$—	$90

To all of tax..... $1.35
To penalty of — per cent..... $
Advertising..... $

Total..... $

Received payment,

{ Stamp of Collector. Paid May 3, 1901. District of Columbia. }

E. G. DAVIS,
Collector, D. C.,
By C. M. T.

B. L. C.

(On side.)

General taxes in arrears will be reported on the back of this bill.

For further description of property see records and plats.

374 EXHIBIT DEFENDANTS No. 8.

SURVEYOR'S OFFICE,
WASHINGTON, *May* 3, 1901.

M–. Minnie D. Goldberg, 1217 11 St. S. E., to the District of Columbia, Dr.

For estimated cost of surveying pt. orig'l lot 2, square 977.
For description see retained am't. 95 C.

(Collector's seal.) $3.00.

Received payment,

E. G. DAVIS,
Collector of Taxes, D. C.
I. W. C.

This receipt, after being signed by collector of taxes, must be shown to the clerk of the surveyor, D. C., at the city hall, who will place the order upon his order book.

When work is completed you will be duly notified, and any unexpended balance will be returned to you upon presentation of this receipt to the auditor, D. C.

N. B.—If this receipt be lost a bond of indemnity for twice the amount will be required before return of the balance which may be found due.

N. B.—Before building call for plat of survey.

375 EXHIBIT DEFENDANTS No. 9.

WASHINGTON, D. C., *May* 29, 1901.

Mr. Thos. Fields, city.

DEAR SIR: I am in receipt of your letter about the Goldberg matter and would say in reply that I do not care to say anything about it until I am called to tell what I know in court.

If I am sued I know nothing about it, and I suppose if I was I would get notice of such.

Very respectfully, L. RICHOLD.

EXHIBIT DEFENDANTS No. 10.

(*Envelope.*)

(Stamp.)

MR. THOS. FIELDS,
Att'y (a-) Law,
City.
4½ *St. N. W.*

376 EXHIBIT DEFENDANT- # 10.

MAY 28, 1901.

Mr. Leopold Richold, city.

DEAR SIR: I shall be pleased to see you at your early convenience in regard to the pending suit of Shappirio *vs.* Goldberg regarding the sale made last year through you of part of lot 28 in square 977 by Goldberg to Shappirio, in which you and Goldberg are charged with having defrauded Shappirio. I represent Goldberg in this suit.

Very truly yours, THOS M. FIELDS.

377 EXHIBIT DEFENDANTS No. 12.

J. M. Stein & Co., merchant tailors, 413 Eleventh street N. W.

WASHINGTON D. C., *Jan.* 17, '01.

Mr. G. Goldberg.

DEAR SIR: I have fully made up my mind not to rent 1245 & '47 any other way than I have been renting you heretofore as I think $50 is very cheap for the 2 buildings and should you make up your mind to move you will please give me 30 days' notice as per agreement.

Yours very truly, J. SHAPPIRIO.

378 LOUIS GOLDBERG, a witness produced on behalf of complainants in rebuttal and who having been first duly sworn, testified as follows:

Direct examination.

By Mr. SIMMONS:

Q. Please state your name, age, residence, and occupation.

379 A. Louis Goldberg; residence, 1253 11th street S. E.

Q. How long have you been living there? A. About fifteen years.

Q. Do you own any lots in that square where you live? A. Yes.

Q. What lots are they? A. Lots 1 and 2.

Q. In that square? A. Yes.

Q. Have you ever offered those lots for sale to any person? A. Not that I know.

Q. Did you ever authorize anybody to sell them? A. No, sir.

Cross-examination.

By Mr. FIELDS:

Q. How long have you been engaged in business in this city? A. For the last fifteen years; since 1886.

Q. Have you ever *have* any financial difficulties since you have been here? A. No, sir.

Q. Have you ever owed any debts? A. Well, I am in debt all

the time; at the same time I pay. I never was sued for any money yet.

380 Q. Have you always paid your debts on demand? A. Yes.

Q. Have you ever mortgaged or put an incumbrance on your property? A. Yes; I have a little mortgage on it; not much.

Q. Has there been a mortgage on it ever since you owned it? A. Yes.

Q. Have you ever been in default on that mortgage? A. In default in paying the loan?

Q. Yes. A. No, sir.

Q. Is the mortgage overdue now? A. No, sir; it is not due. It is in the building association and we pay monthly.

Q. How long has it been since you and your brother George have not been on speaking terms? A. I think it is about three years.

Q. During that time you have not spoken at all, have you? A. No, sir.

Q. Your families have not associated in any manner? A. No, sir; we don't associate at all.

Q. Has this trouble between you and your brother grown out of business matters? A. I don't know. We never had any argument. He stopped in there one day——

381 Q. Didn't you have some trouble about business matters? A. None whatever.

Q. What was the cause of your disagreement? A. Well, I opened a dry-goods store and I suppose it was a little close to him.

Q. Did you know whether there was ever a report or rumor in your neighborhood that lot 2 would be sold some time? A. You mean the front part of lot 2?

Q. The front part.

Mr. SIMMONS: The part you own?

A. No, sir; it has never been for sale.

Q. How long have you owned it? A. Since 1895.

Q. It is not for sale now? A. No, sir.

Q. You never heard of a rumor that it was for sale or would be sold? A. I never did.

Q. Are you able to state that there was not such a report or rumor in that neighborhood? A. I never heard it.

Q. You don't know whether there was or not? A. If that place would be for sale, I am the owner of it and I ought to know it whether it was for sale. But about any rumors I cannot give any statement about it.

382 Q. You don't know? A. No, sir.

Redirect examination.

By Mr. SIMMONS:

Q. You were subpœnaed here by the court? You had a subpœan served on you? A. Well, I was summoned yesterday.

Q. Have you that paper? A. Yes; I think I handed it to you.

LOUIS GOLDBERG,
By J. A. SWEENEY, *Examiner.*

383 At the same time and place also appeared ABE SAKOLSKI, a witness produced in the same behalf, —, being first duly sworn, testified as follows:

Direct examination.

By Mr. SIMMONS:

Q. Please state your name and residence. A. Abe Sakolski; residence, 226 12th street southwest.

Q. State your age and occupation. A. Age, 28; I am in business with my father.

Q. How long have you been living there? A. About three or four months.

Q. Where did you live prior to where you are living now? A. 1243 11th street southeast.

Q. How long have you been living at that place? A. About a year and a half.

Q. During that time were you familiar with the location of the premises 1245 and 1247 11th street, where Mr. Goldberg used to live? A. Yes.

Q. During the time you lived there state whether or not you noticed any animals in the yards of Mr. Goldberg; and, if so, what were they. A. A dog and a goat.

384 Q. How often did you see the dog in there? A. Well, he was there all the time.

Q. What was the color of the dog? A. A white bull-dog.

Q. Were you there when Mr. Goldberg moved from that place? A. Yes; I was there all during the day every day.

Q. What became of the dog when he moved? Did he take it away? A. I don't know what became of him. I know when they went away the dog went, too.

Q. So just about a year prior to the time he moved do you remember whether or not the dog was there? A. Yes; the dog was there.

Q. How often did you see him? A. Whenever I would go out in the yard I would hear him bark, and I would see him once in a while—occasionally.

Q. How often did you see the goat? A. I would see it pretty near every day, back.

Q. Where was it? A. They would take it out on the back lot there and drive it in in the night-time.

Q. Do you know whose dog it was—who it belonged to? A. I don't know anything about the dog—who it belonged to.

385 Q. You only know it was there? A. I only know it was there.

Cross-examination.

By Mr. FIELDS:

Q. Who lived in the upper part of 1245? A. I don't believe any one lived there.

Q. Was it vacant? A. I think so—the upper part. To the best of my knowledge, I don't think any one lived there.

Q. Was it vacant during the whole year and a half you lived on 11th street? A. I had been living on 11th street for the past thirteen or fourteen years, in business. I am there in the day only. I go home at night to sleep. That is all I know.

Q. Did you ever know anybody to occupy the upper portion of 1245? A. I occupied it at one time.

Q. Who succeeded you as tenant? A. No one.

Q. You never knew it to be occupied afterwards? A. No, sir.

Q. How could you see this dog in the yard? A. He would come out sometimes. They would leave him out and I have often seen him through the fence.

Q. At the back or front? A. At the back. If any one would come in our place the dog would bark.

386 Q. Was that dog there in May, 1900? A. I cannot tell you the month. May, 1900?

Mr SIMMONS: That is about a year prior to the time Mr. Goldberg moved? A. The dog was there a long time. I don't remember the months he was there. I know the dog was there a long time.

Q. Was it there during May, June, July, and August, 1900? A. I think he was.

Q. Are you positive? A. Let me see how long that is. October——

Mr. SIMMONS: That is a year ago last June—1900.

Mr. FIELDS: I object to counsel assisting the witness. He is intelligent and can answer my questions.

A. The dog had been there for a long time. Exactly how long he has been there I cannot tell. I know I saw the dog there several times.

Q. Are you positive the dog was there after the first day of May, 1900? A. How long ago is that; how many months from that till now? That is not quite a year. The dog was there any time after May 1st, 1900.

Q. That was eighteen months ago? A. Yes; the dog was there.

Q. Was there dog there positively? A. Yes.

387 Q. And are you positive that the goat was there at that time? A. Yes; the goat was there, too.

Q. Was the goat in the yard or back? A. The goat was in the back shed.

Q. In the shed of which house? A. To that house; it belonged to the house.

Q. There are two sheds there? A. Two sheds? I only know of one.

Q. There is a shed in the rear of 1245 and a shed in the rear of 1247? A. That was 1245.

Q. And was it in the yard of 1245 you saw the dog? A. Yes.

Q. And in the shed of 1245 you saw the goat? A. The dog I saw in 1247. It was open; it run from one yard to the other.

Q. And the goat was in the shed of 1245? A. Now, you are getting that wrong; 1245 was next door to us. There is where I seen the dog.

Q. What was your number? A. 1243.

Q. And you saw the dog in 1245? A. I saw the dog in 1245 and the goat in the shed belonging to 1247.

Q. And you don't know to whom the goat and dog be-
388 longed? A. I don't know who they belonged to.

Q. What was the color of the goat? A. A sort of brownish yellow. I don't know what color you might call it.

Q. Did you ever see goats of different colors or only this one? A. I don't know. I seen one that had young ones.

Q. Did you ever see any dogs except this white one? A. No, sir; that was the only dog that was there.

Q. How do you fix matters in your mind so you are able to state positively on your oath that the dog and goat were on the premises in May, 1900? A. Well, because, as far as I remember—it was none of my business about the dog or goat, but I am positive they were there long before even you say. They have been there a long time. They have been there before Mrs. Goldberg gave birth to a child. That is why the goat was gotten; for milk for the infant; that is the reason I can say that.

Q. If the child was born in 1895, would you still say that the goat was there in 1900, five years later?

Mr. SIMMONS: I object to that question on the ground that it is well known to the attorney for the defendants that Mrs. Goldberg had three children born between 1896 and 1900, and that one of the children was born four or five months prior to May, 1900, or four or five months prior to May a year ago.

389 Mr. FIELDS: The question is predicated of the statement of the witness that the goat was gotten at the time Mrs. Goldberg gave birth to her first child.

Mr. SIMMONS: He did not say anything of the kind. I object to the question.

Q. Was the goat gotten for Mrs. Goldberg's first or some subsequent child? A. I think it was—not the first child. It was not the first child, I don't think.

Q. How long was the goat kept there after the birth of the child for which it was gotten? A. It was there ever since. They always kept it.

Q. How many years altogether was the goat there? A. In my judgment I judge it was there a couple of years.

Q. How many years altogether was the dog there? A. About a year and a half, I should judge.

Q. Did you pay any particular attention to the goat or dog, or the dates? A. No, sir; I never bothered about the dog or goat; I just simply seen them there. That is all I know. They did not belong to me and I did not bother about them.

Redirect examination.

By Mr. SIMMONS:

390 Q. You know when Mr. Goldberg moved from there? A. Yes.

Q. How long has that been? A. I guess it is about five or six months.

Q. How long was the dog there prior to the time he moved from the place? How long had you noticed the dog being there? A. For a long time. I never paid any attention to the man's dog. I know it was there for a long time.

Q. Was it there when you were living over 1245? A. No, sir; not that I know of.

Recross-examination.

By Mr. FIELDS:

Q. You say you saw the dog five or six months ago when Mr. Goldberg moved? Are you sure of that? A. Yes; I seen the dog there until he moved.

Q. That, you say, is five or six months ago? A. I judge that is about that. I cannot say positively.

ABE SAKOLSKI,
By J. A. SWEENEY,
Examiner in Chancery.

391 Also ISAAC SAKOLSKI, a witness produced in the same behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. SIMMONS:

Q. Where do you live? A. I live on B street southeast; 1209.

Q. Are you acquainted with the premises 1245 and 1247 11th street southeast? A. Yes; very well.

Q. Have you a place of business anywheres near there? A. Yes; I have a double store.

Q. Where is it located? A. 1241 and 1243 11th street.

Q. How long have you been in that place of business? A. I have been there for the last eleven or twelve years.

Q. State whether or not you have ever seen a dog or a goat around the premises 1245 and 1247 11th street. A. I have seen a dog and a goat, and they were a great nuisance to my house.

Q. How often did you see the dog and goat on the premises? A. I didn't see them often, but I heard them often; every night.

The dog had a habit when I went out in the yard, or anybody else, to bark. It was a bull-dog.

392 Q. Did you ever see the dog? A. I used to see him occasionally. Mr. Goldberg took them out sometimes in the back lot, and his brother-in-law used to take him out.

Q. What is the brother-in-law's name? A. Ike or Mike.

Q. State his name as near as you know. A. He is a small man; a medium-sized man.

Q. Do you know his last name? A. I don't know exactly his name. I think they called him Mike, if I am not mistaken.

Q. You saw him with the dog? A. Yes.

Q. What was the color of the dog? A. He was a kind of black-spotted, medium-sized dog.

Q. How often did you see the goat around the premises? A. The goat I used to see in the summer time right often on the lot. There is a lot back of us.

Q. Did you ever see any of them with the goat—driving it? A. The goat used to be tied occasionally on the lots.

Q. Did you ever see any of them tieing it there? A. Yes.

Q. Who? A. Mr. Goldberg himself and sometimes his brother-in-law.

393 Q. And by his brother-in-law to whom do you refer? A. His brother-in-law; the only one I know. He has another one—Louis—but he didn't live there.

Q. What does he do around the premises? A. He used to work for Mr. Goldberg, taking care of his place of business.

Q. How long prior to the time Mr. Goldberg moved from there had you noticed this dog and goat? A. The dog has been there from the first day he moved there till he left.

Q. How long has the goat been there? A. The goat has been there since the time the second child was born. It was bought for the purpose of using the milk for the child.

Cross-examination.

By Mr. FIELDS:

Q. Were you and George Goldberg on good terms? A. Yes; I was on good terms with him. I rented one building from him for six years. He was next to me.

Q. Did you ever have any difficulty with him? A. No, sir.

Q. You never did? A. No, sir.

Q. Did you ever have any quarrel with him about this dog and goat? A. No, sir.

394 Q. Did you ever make any complaints to him or the police about it? A. No, sir; never, because I thought the dog was a little protection to me. The people around there are a little rough and it was protection for the building to keep the dog in the yard, to keep burglars away.

Q. Did you ever make any complaints about the dog being a nuisance? A. No, sir; it was a nuisance, but I never made any complaints.

Q. Who owned the goat? A. I cannot say who owned the goat. I suppose Mr. Goldberg owned the goat and the dog.

Q. Did he ever tell you whom he bought the goat from? A. From Mr. Johnson, an old gentleman who is dead.

Q. Who bought the goat when it was sold? A. I cannot say. The goat was left in the possession of Mr. Eiznar for a few weeks, on 11th street, a neighbor who was living above me.

Q. When was the goat sold? A. I cannot say.

Q. What became of the dog? A. I cannot say what became of it when they moved away.

Q. When they moved, did the dog go too? A. Yes. The goat was left for a few weeks with Mr. Eiznar. Eiznar keeps a furniture store up above me.

395 Q. Was the dog left also? A. No, sir; not that I know of.

Q. Did anybody occupy 1245, the upper part? A. That is next to me. No, sir.

Q. How long is that vacant? A. It is vacant since Mr. Goldberg moved. That part of the building always was vacant. Mr. Goldberg never occupied it. It has no entrance. Neither did he occupy it or rent it himself. He has two buildings there close together.

Q. How long was the goat there altogether? A. The goat was there from the time the second *time* was born. I cannot exactly tell you the date or the years.

Q. About how many years? A. I think it must have been about three years, more or less.

Q. How long was the dog there altogether? A. From the time he was married to the second wife.

Q. About how many years was that? A. I cannot say that, how long they are married. I suppose he is married about five years. I cannot say exactly, but more or less.

Q. Did you ever pay any particular attention to the goat or dog? A. I did.

Q. Why? A. I liked to look at goats sometimes and pretty
396 goats and pretty dogs.

Q. Is that the only reason? A. No other reason. I liked to look at them—see them.

Q. How would you see the goat and dog in Mr. Goldberg's yard? A. I didn't see them exactly, but I heard him bark; and the goat I saw every day out in the lot back of the yard—that is, in the summer time.

Q. Did you ever see the goat or dog in Goldberg's yard? A. Well, sometimes I could see them. The fence is a kind of a little open. But there was plenty of noise without seeing him; I heard him.

Q. Did you ever see him in the yard? A. Yes; many a time.

Q. How long ago did Goldberg move away? A. Mr. Goldberg moved away since he sold the house to Mr. Shappirio. He didn't leave at once. He moved a little later. He lived in it about four or five months. He rented it.

Q. He moved away five or six months ago? A. From now?

Q. Yes; from last May. A. The house was vacant a while, and I suppose it must have been about six or eight months since Mr. Goldberg left. I didn't take any stock in it.

It is agreed that both of these witnesses are under subpœna.

397 Mr. FIELDS: I object to the whole of the testimony of the witnesses Abe Sakolski and Isaac Sakolski, on the ground that the subject-matter thereof, to wit, the goat and the dog, is irrelelant and immaterial to the issue in this case.

Mr. SIMMONS: I will state that the evidence is offered to rebut the evidence of the two defendants and Mr. Isaac Roginski and to substantiate and confirm the evidence of Mr. Galloway.

ISAAC SAKOLSKI,
By J. A. SWEENEY, *Examiner.*

398 Also T. EDWARD CLARK, a witness produced in the same behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. SIMMONS:

Q. Please state your name, age, residence, and occupation. A. T. Edward Clark; residence, 811 11th street N. E.

Q. Mr. Clark, do you know the location of lot 2, in square 977? A. Well, I am not so sure about the number of the lot. I know all about square 977. I think it is lot 2. I am not sure unless I could refer to something. I am not sure that is the number.

Q. I point out to you lot 2, on Hopkins' map of square 977, lot 2 fronting on N street and running back—the original lot runs back to a public alley; and lot 1, in the same square, runs to 11th street, and lot 28, in the same square, runs to Eleventh street and runs back and abuts lot 2. A. Yes; I am familiar with that property.

Q. State whether or not your father owned that property—that is, the back end of lot 2 (indicating). A. I think so. Yes, that is it. He owned a piece of ground on the back of that lot 20 by 30 feet.

Q. Back of lot 28 (indicating)? A. Part of lot 2, I think.

399 Q. And that piece of lot is part of the rear of lot 28? A. Lot 28.

Q. State whether or not you ever had any conversation with Mr. George Goldberg in relation to the sale of that piece of lot 20 by 30. A. Yes.

Q. State what the conversation was and how it came about. A. Well, Mr. Goldberg, as I understand, bought lot 28 or part of lot 28, I think, at a public sale and built upon it, and this little piece of ground which you speak of, part of lot 2, cut him off in a measure from the alley and made an entry right into his lot, so to speak. I thought he should own it, and I went to see him and tried to sell it to him—oh, that has been, I think, perhaps ten years ago—and he didn't seem inclined to pay much for it and didn't think it was

worth much, &c., and I saw him, without going into particulars, a great many times in reference to it—a great number of times—and sometimes I would stop in front of his place and talk about it, and *and* he would say he would like to buy it, but I wanted too much for it, &c., &c., &c. That was when he was on D street between 9th and 10th, on the north side. Nothing ever came of it, but several years ago, perhaps about four, when he was in business down there, after a lapse of two or three years, I called on him again in reference to it down at the store on 11th street, and pretty much
400 the same thing occurred. He did not seem inclined to pay much for it, and I didn't propose to sell it at the price he estimated, and nothing came of it.

Q. Did he ever make you an offer for it? A. Well, I think he did, rather indirectly, perhaps, but I never entertained the offer he made. It was small, whatever it was.

Q. Do you know how much it was? A. I don't know that I do positively, but it certainly did not exceed twenty-five cents a foot, if it was that much.

Q. In his conversation with you did he state whether or not the lot was worth twenty-five cents a foot, or did he say what it was worth?

Mr. FIELDS: Question objected to as leading.

Q. Did he say to you what he considered the lot worth?

Mr. FIELDS: Question objected to as leading.

A. Well, I think he did. I remember distinctly in the interview with him on 11th street at the store he spoke of the value of surrounding property, that he could buy it for fifteen cents a foot and he didn't know why I should want so much. Some conversation of that kind occurred. He said ground around there was very cheap and was not worth much, and still he would pay that amount for the lot, but would not want to pay so much.

Q. After that when did you hear of this same transaction
401 again, if at all? A. In Mr. Darby's office on 14th street near the Avenue.

Q. When was that? A. Oh, I should think about a year ago. I don't know the precise time. About a year ago, I should think. I was in there one day and he showed me a letter from a man by the name of Solomon Lewis, I think. It was a letter addressed to Darby and asking what he would take for this piece of ground. He told me where the party was, on the south side of D street between 9th and 10th.

Q. Southwest or northwest? A. Northwest.

Mr. FIELDS: The part of the witness' answer which relates to the contents of the letter and what Mr. Darby said to him is objected to as hearsay and immaterial.

Q. Now, what did you do after that? A. I went down to see this gentleman, Mr. Lewis, I think, and we had some conversation. I

told him what I came for, &c., and we had some talk about it, and he wanted to know what I would take for it, and I think I told him $500.

Mr. FIELDS: The testimony of the witness as to what he said to Lewis or Lewis said to him is also objected to as being hearsay.

Q. Did you come to any conclusion with Mr. Lewis?

Mr. FIELDS: Question objected to as leading.

A. No, sir.

402 Q. Then, what did you learn after that in relation to the sale of that part of the lot, if anything? A. I made a proposition to Mr. Lewis, rather an indirect one. I will state that if you wish.

Mr. FIELDS: Objected to as hearsay, and I object to the entire line of examination, as it calls for transactions and conversation between the witness and persons other than the defendants in this suit, unless it be intended by counsel to follow up this evidence by proof of the fact that these things were done under the authority or with the knowledge of the defendants.

Mr. SIMMONS: Counsel for the complainants will, if Mr. Fields desires it, call Mr. Lewis, but it is a well-known fact to him that Mr. Lewis is connected with the family of Goldberg, having married a sister of Goldberg's, and I want his conversation followed up to show what became of that negotiation.

Mr. FIELDS: The objection still stands upon the statement of counsel.

Q. Go ahead, Mr. Clark. A. A few days after that, three or four, perhaps—maybe a week, I don't know—a short time, a few days, I learned from Mr. Darby that Mr. Goldberg had called to buy the lot and made a deposit on it. Shall I state the price?

Q. Yes. A. Fifty cents a foot.

Mr. FIELDS: Objected to as hearsay and incompetent,

403 and, in order to save repeating my objection and interrupting counsel and the witness, let it be understood my objection applies to all testimony of this character.

Mr. SIMMONS: Of this character; yes.

Q. Now, what was said about any agreement on your part about accepting $300?

Mr. FIELDS: That is objected to as leading.

Q. State what was said, if anything, in relation to any agreement on your part to accept any amount.

Mr. FIELDS: That is objected to as leading, and just as much so as the first question.

A. When I was leaving Mr. Lewis, after he had offered me twenty-five cents a foot, I told him that nothing less than fifty cents

a foot would buy it, and if he was not prepared to pay that much it was not worth while to talk any more about it, and I left him.

Q. State whether or not any message came to you to indicate that that conversation with Mr. Lewis had been communicated to Mr. Goldberg? A. No, sir.

Q. Was there any statement made to you to indicate that Mr. Goldberg, through Mr. Lewis, had accepted that proposition?

Mr. FIELDS: Objected to as leading.

A. No, sir.

Q. Was there anything said by Mr. Darby to indicate that Mr. Goldberg, through Mr. Lewis, had acted on that suggestion of fifty cents a foot?

404 Mr. FIELDS: Objected to as leading and calling for hearsay.

A. Mr. Darby communicated with me by telephone that Mr. Goldberg had called and made a deposit of $20, and he sold him the lot at fifty cents a foot. That is the first I heard of it.

Mr. FIELDS: Objected to as hearsay.

The WITNESS (continuing): And subsequently I saw Mr. Darby, and he told me all about it.

Q. What did he tell you?

Mr. FIELDS: Objected to as hearsay.

A. Substantially what I said.

Q. Was anything said by Mr. Darby to indicate that he supposed that you would accept the fifty cents a foot?

Mr. FIELDS: Objected to as leading and calling for hearsay, and also for a mere opinion.

Q. (continued). And that Mr. Goldberg had acted upon that through Mr. Lewis?

Mr. FIELDS: Objected to for the same reason.

A. No, sir; from nothing that was said to me.

Q. How often did Mr. Goldberg stop you on the street about this lot? A. Well, it is impossible to say how often, but a number of times; half a dozen times or more.

Q. State, Mr. Clark, in what way you were interested in that lot.

A. Interested in it?

405 Q. Yes. A. Well, it belonged to my estate—it belonged to my father, and at my instance Darby bought that and some other property. I was interested to have him sell it and get all he could for it and turn it into money.

Q. Are you any relation to Mr. Darby? A. He is my son-in-law.

Cross-examination.

By Mr. FIELDS:

Q. Mr. Clark, could that property been purchased when Mr. Darby sold it for less than $300? A. At the time of the sale to Goldberg, I think not, sir.

Q. Was $300 an outrageous and unreasonable price for it, situated as it is? A. I thought it was a good price.

Q. Do you think it was an extravagant, outrageous, or unreasonable price? A. In my judgment, no.

Q. What gave it its peculiar value? A. I don't know it had any peculiar value. My idea is that the ground in that neighborhood is worth fifty cents a foot; about that.

Q. And was not this particular strip of ground, 20 by 30, constituting the rear part of lot 2, also very valuable as being the outlet to the alley from lot 2, and also being an outlet to the alley
406 from the part of lot 28? A. Yes.

Q. It was the key to the whole situation, was it not? A. Yes; and I think just as valuable to a party owning lot 28 as lot 2, for that matter, the front ground.

Q. And by reason of its being a key to lot 28 and lot 2, to the alley, you think it had a peculiar value? A. Yes. Aside from that, I question very much, situated as it is, whether it would have brought half that amount; whether it was actually worth twenty-five cents. I don't know I can make myself clear. If it had been back ground in there that did not cut off anybody from the alley and nobody would have wanted it, I don't think it would be worth half that, but its peculiar relation to the land fronting on 11th and N streets made it valuable to whoever owned the front ground.

Redirect examination.

By Mr. SIMMONS:

Q. Now, Mr. Clark, look at this map again and, assuming this little piece of lot came within, say, two feet of the building on 11th street, state whether it had a peculiar value, or that its value would be more to the person owning lot 28 than it would to the person owning lot 2.

Mr. FIELDS: That is objected to as calling for the opinion of the witness.

A. I should think it would. If it came within two feet of
407 his house there the person owning lot 28 would hardly have any yard at all and it would be very valuable to him.

Q. Taking away the situation of the two lots, what would you say that little piece of ground was worth by itself, without being connected with any other piece of ground? A. Without considering its value in connection with any other property?

Q. Yes. A. About 10 cents a foot.

Recross-examination.

By Mr. FIELDS:

Q. Now, Mr. Clark, let me call your attention to something. You observe from the plat that these two buildings on lot 28 have an outlet to the alley along this line in the rear (indicating). You also observe that lot 2 without this strip of ground——

Mr. SIMMONS: Don't say what is not observed. Observe these two lots and that there is no outlet at all from 1247 without going on the premises of 1245——

Mr. FIELDS: The evidence shows you can readily go through this outlet in 1245 to the alley.

Q. You observe this outlet shown on the plat of lot 28 to the alley? A. Yes.

408 Q. You observe also that lot 2 had no outlet whatever to the alley, that this strip of ground cuts off the outlet. A. Is that it (indicating)? I understand that this strip of ground terminates there (indicating), or does it run to this line (indicating)?

Q. It runs to this line. It terminates here (indicating). A. Is not this a part of this lot running back to the alley, and they would have an outlet over that to the alley independent of that strip.

Q. They would have an outlet over the west part of lot 2—this part (indicating), and no outlet over the east part? A. No outlet over this part (indicating)?

Q. Or over this part. A. Why not go between these two lots?

Q. Here is the alley here (indicating). A. Here is the alley here (indicating).

Q. How can you get past here? Here is the line there and there and there and there (indicating). Don't stop here, stop here (indicating). A. If it stops there I thought they might have that line (indicating). Of course, if they would not have an outlet——

Q. Assuming, as shown by the plat, that there is now an outlet over Goldberg's part of lot 28 to the alley and that there is

409 no outlet to the alley from lot 2, except over this strip of ground, to which lot would that strip of ground be the more valuable? A. I should think it would be more valuable to lot 2 because they would not have any outlet at all—I don't know where Goldberg's house comes—provided Goldberg had an outlet to the alley independent of it.

By Mr. SIMMONS:

Q. Look at that plat again and tell us whether or not that piece of lot, as it is situated, is not more valuable to lot 28 or the premises 1247 11th street, by reason of forming a part of its yard, than it would be as an outlet to the alley. You will notice that this lot takes away the entire yard of premises 1247. Now, tell us whether or not it is not of more value by reason of forming a part of the yard of 1247 than it is as an outlet to lot 2. A. A great deal depends on the character of improvements. Now, Goldberg had a good house on that lot, and if I owned Goldberg's property I would

not be without that piece of property if it cost me a great deal of money, and I would consider it almost invaluable. And so I would if my house or residence was on lot 2. I think it is valuable to either of them. It is, perhaps, no more valuable to lot 28 than to the other, except by reason of the fact that lot 28 is improved with a very good house—a fine house, perhaps—and the other on
410 N street is not improved by anything except by an old frame shanty.

Q. Taking that into consideration, you deem that piece of lot as a great deal more valuable to lot 22, where the better improvements are, than you do to lot 2, where there is a small frame shanty? A. I do. I certainly do.

Q. Look at this Exhibit E which I show you, and which shows a part of the premises, and you will notice a cross-mark there marked fence, which indicates the line of this little piece of lot, and shows where it has been cut off the premises 1247 11th street. A. Which was Goldberg's premises?

Q. Which was Goldberg's premises—that part of lot 28; and state, after looking at that, whether or not it is of more value to this lot 28 than to lot 2 in its present condition. A. I should think so, most assuredly.

Q. How much more? A. Oh, a great deal more. It is hard to say how much more.

By Mr. FIELDS:

Q. Mr. Clark, do you consider a back yard of more importance than an outlet to an alley? A. Well, that depends so largely upon circumstances it is hard to answer that question straight.

411 Mr. SIMMONS: In the condition of the present improvements there? A. In view of lot 28 and lot 2?

A. Yes.

Q. Is it of more value to lot 28 as a back yard than it is to lot 2 as the only outlet to the alley? A. As the property is situated today as I know it, I would consider the piece of ground worth to the party owning 1247, I believe is the number, a good deal of money; while to the other lot, which is unimproved, I consider it of very small value.

Q. And do you base your answer entirely upon the fact that the improvements on lot 28 are superior to those on lot 2? A. Yes.

T. EDWARD CLARK,
By J. A. SWEENEY, *Examiner.*

412 At the same time and place also appeared PETER YUDELEVIT, a witness produced in the same behalf, —, being first duly sworn, testified as follows:

Direct examination.

By Mr. SIMMONS:

Q. Please state your name, age, residence, and occupation. A. Peter Yudelevit; residence, 633 D street N. W.

Q. Do you know Mr. Louis Roginski? A. Yes.

Q. How long have you known him? A. I have known him for twelve or thirteen years.

Q. Did you know him when he was in business with Mr. Solomon Lewis on D street? A. Yes.

Q. State whether or not you ever had any transactions with him in relation to money matters, and state what they were and how they were. A. He used to take from me $25 and $50 many times—every other week he used to take money from me, and used to give it back, you know—at the time, about seven or eight years ago; and when I moved out from D and to 10th streets and
413 he commenced to come up there and ask me to give him money, and I gave him $45, and since that time he didn't pay me.

Q. State all he said to you when he borrowed this money as to what he wanted it for. A. He wanted to pay bills—to settle bills.

Q. State whether or not he ever bought any merchandise from you. A. No, sir.

Q. State whether or not *ge* ever bought any groceries or provisions. A. He didn't buy any from me. Before he used to live on D street his mother used to buy sometimes, but the time I was on 10th street he never bought from me nothing.

Q. How much did his mother buy from you? A. The month round, I might say.

Q. Did they pay cash for it or credit? A. They took credit.

Mr. FIELDS: No cross-examination.

The whole of this witness' deposition is objected to as being incompetent, irrelevant, and immaterial to the issues in this case.

STIPULATION.—It is admitted by the attorney for the defendants that Mr. Shappirio, whom counsel for complainants was about to call in rebuttal, had already testified that the dog and goat were
414 seen in the yard at the time Mr. Galloway and he examined the property.

PETER YUDELEVIT,
By J. A. SWEENEY, *Examiner.*

Whereupon an adjournment was taken to meet on Tursday, October 15th, 1901, at 3.30 o'clock p. m.

415 TUESDAY, *October 15th*, 1901—3.30 o'clock p. m.

Met pursuant to adjournment last noted.

Present: Same counsel.

Whereupon LEOPOLD RICHOLD was recalled as a witness on behalf of complainants in rebuttal.

Direct examination.

By Mr. SIMMONS:

Q. Mr. Richold, at the time you went to Mr. Goldberg's store to get authority from him to sell his property, whom did you see on

entering the store? A. I will tell you right here now, gentlemen. Mr. Goldberg and his wife were standing right behind the counter.

Q. Did either one of them go out of the store while you were present? A. No, indeed; no one went out of that store. Both of them were standing behind the counter.

Q. And remained there until you left? A. Yes.

Q. Now, in Mrs. Goldberg's testimony she was asked this question by her counsel: "Are you positive that Mr. Goldberg told Richold that only part of the lot ran back to the alley?" and she says, "Yes; in reading he says, 'Stop right there.' He says, 'Let me call your attention to that.' That is why it made such an impression. He
416 says, 'Before you go any further let me call your attention to that, only part of the lot runs back to an alley.'" State whether or not any such conversation as that took place at that time. A. Never; there was nothing mentioned in the world. I asked Mr. Goldberg, "Will you take $6,000 cash?" And he said, "Yes, I will take it. There is so much malaria and business left this part of the town. You shall have it in writing." I said, Will you be kind enough to bring me a piece of paper? and I drawed up the paper and gave it to Mr. Goldberg, and he read it and he signed it, and he gave it to his wife sitting there, and he said, "Sign it; it is all right;" that is all.

Q. Did Mr. Goldberg read the paper? A. He certainly did. I gave it to him and he read it that way (indicating).

Q. Then what did he do? Did he hand it to his wife? A. After he signed it he said, "Minnie"—I cannot remember the name—"you sign it," and that is all. And never nothing else was said.

Q. Did Mr. Goldberg ever state to you at any time prior to the sale of this property to Mrs. Shappirio that only a part of the lot ran back to the alley? A. I never heard any such a thing in my life, until five or six months afterwards, as I said before. That is all, and nothing more.

417 Q. He told you about five or six months after the sale? A. Yes. I said that before. I need not offer the argument again.

Q. Mr. Guy, of Guy, Curren & Company, has stated here that you did not call on him in relation to this property, and he did not state to you that Mr. Goldberg would buy the property back. State what you know about it. A. I wish to God you had him here under oath. I know all about that. I went to Mr. Guy, of Guy, Curren & Company, and offered him Mr. Shappirio's property. He said, "Mr. Richold, oh pshaw, Mr. Goldberg will buy that back."

Q. Have you seen Mr. Guy lately? A. Yes, I did. I met him.

Q. State what he said. A. I met him two or three Sundays ago—maybe two or three, I am not positive—in the National hotel. I was getting my shoes blacked. And he came up and there was a colored man up in the chair, and he said, "What did you say? I never told you that Goldberg would buy the property. Now, here, I want to tell you how that thing was. We are in business here, and he buys goods from me"——

Q. Who said, "I want to tell you how that was"? A. Mr. Guy—was it Guy or Curren? "Now," he says, "I thought that was a sham sale by Goldberg, that Goldberg and Mr. Shappirio are very good friends, and I thought he would buy it back." He said the
418 lawyers would call up any one for a witness. And I said, "Mr. Guy, didn't you tell me Mr. Goldberg would buy it back?" He says, "I certainly did, but I didn't mean any harm, Mr. Richold." I said, "You cannot deny it in my face." And he said, "I thought it was a sham sale." I says, "No, sir; I went to borrow the money from Clarence Norment, and I went out and made the loan. That was no sham sale." He said, "I thought Goldberg would buy it back because it was a sham sale. Of course, we have to look into those matters to protect ourselves, and I know Mr. Shappirio and Mr. Goldberg were good, intimate, personal friends." And this is the reason when I offered the property to Mr. Guy he said Goldberg would buy it back. The man meant no harm no more than you or anybody else.

Cross-examination.

By Mr. FIELDS:

Q. Did Mrs. Goldberg read the paper before she signed it? A. Mr. Fields, allow me to tell you. I wrote the paper and gave it to Mr. Goldberg, and he handed the paper, you understand, and he read it just in that way (indicating), and he set his hand before him.

Q. Did his wife read it before she signed it? A. He said it was all right; sign it.

Q. Did she read it before she signed it? A. I don't re-
419 member whether she did or not. I don't want to say anything unless I remember.

Q. Was she in the store when you wrote the paper, or did Goldberg call her in from the kitchen? A. No, sir, Mr. Fields. When I tell you a word is a word, I will die on it. When I came in, she and Mr. Goldberg were standing behind the counter and Mr. Goldberg said, "All right; sign that paper."

Q. Did you see Isaac Roginski there at the time? A. I did. He was standing right outside.

Q. You mean outside of the store? A. No; outside of the counter.

Q. How far away from you was he? A. Well, he was about as far as this gentleman back here (indicating about ten or twelve feet).

Q. Was he listening to the conversation between you and Goldberg? A. I cannot tell you. When I am doing business with honorable people I don't expect anything to occur.

Q. Did you read the paper out loud? A. I did; and Mr. Goldberg read it himself. He took the paper that way (indicating), and he read it himself before he signed it.

Q. Did Goldberg read it before or after he signed it? A. I read it and he taken it up and read it again.

Q. Was Isaac Roginski standing there when you read it? A. He was out there.

420 By Mr. SIMMONS:

Q. Outside of the counter, you mean? A. Yes.

By Mr. FIELDS:

Q. Did Mr. Guy tell you he had testified in this case when you saw him? A. He did.

Q. Did he tell you to what he had testified? A. Yes; he told me; yes. He says, "I never thought of anything like that." I didn't ask him anything more about it. He says, "I thought it was a sham sale and that Goldberg would buy it back."

Q. What did Mr. Guy tell you he testified to? A. I didn't ask him. It was none of my business.

Q. You didn't ask him? A. No, sir.

Q. And he didn't tell you? A. Mr. Guy said, "You swore I said that Mr. Goldberg would buy it back." I said, "I certainly did. Didn't you tell me he would buy it back?" And he said, "I told you I thought it was a sham sale and Goldberg would buy it back."

Q. Did he say he testified he thought it was a sham sale? A. No, sir; he didn't say that. He said he thought Mr. Goldberg and Shappirio were right intimate friends and that is the
421 reason he thought it. He didn't mean any harm. He is a public gentleman. I will tell you right now.

Q. Is he a truthful man? A. He is. I always took him that way all my life.

Q. How long have you known him? A. Well, I knew him when he was with Berens & Sons, wholesale notions, on 7th street. He is a fine man. He would not say anything except what is so.

Q. Did Mr. or Mrs. Goldberg have anything to do with the ordering of the certificate of title of the property or the preparation of the deed? A. Nothing at all. I attended to it myself.

Q. Did they ever see those papers until they went there to sign them? A. They were there when they closed it up.

Q. They hadn't seen them before that? A. No; and neither did I.

Q. Were you present when Mr. Shappirio and his wife acknowledged the deed of trust? A. I think I was; yes. I think I was, because that was done all in one time. I think it was during the same time.

LEOPOLD RICHOLD,
By J. A. SWEENEY, *Examiner.*

422 Mr. FIELDS: In accordance with the request of counsel for the complainants, I now produce for identification the witness Isaac Roginski, and as Mr. Galloway has been present for some time and has seen the witness, I now discharge him finally.

Whereupon THOMAS F. GALLOWAY appeared on behalf of the complainants in rebuttal.

Direct examination.

By Mr. SIMMONS:

Q. You saw the gentleman who just left here, who was produced by Mr. Fields as the witness Isaac Roginski that has testified in this case. State whether or not he is the man you referred to as having shown you and Mr. Shappirio the property prior to the sale. A. He is the man.

Q. Mr. Galloway, in your examination by Mr. Fields, it was intimated by him and his examination was to show that at the time you went to see this property it was after the sale to Mr. Shappirio. State whether or not it was after the sale—that is, the first time you went there with Mr. Shappirio—and how you know such to be the fact. A. Well, the first time I ever saw the property was
423 when Jake asked me to go down there to look over it and see if the property was worth the price asked for it. That was previous to the sale, of course, because otherwise I could not have done what I was asked to do.

Q. State whether that was the time Mr. Roginski, the witness who has just left here, showed you the property. A. That is the time he showed Jake and I the property. That is before any sale was made at all. I was just asked to go down to see whether the property, in my opinion, was worth what they asked for it. That is the time he told me to look out for the dog, and I said, "Give me ten minutes and I will steal your damned dog."

Cross-examination.

By Mr. FIELDS:

Q. When was the sale made to Mr. Shappirio? A. I cannot tell.

Q. Have you any idea? A. No, sir; not positively.

Q. Do you know what month it was? A. I think it must have been along about—I cannot be positive on that point, but I think it was about April or May that I went down there the first time. I have been down there a dozen times—yes, and twenty times—since then.

Q. Were you down there in August of last year? A. Yes; I think I went down in August of last year to make some im-
424 provements on the property—something that Mr. Shappirio wanted to call my attention to.

Q. What makes you think that it was April or May of last year the first time you went down there? A. Well, to tell the truth, I would judge that from the state of my books when I did improvements on the property.

Q. Have you examined your books lately? A. Yes; I keep them; yes.

Q. When did you look at them with a view of fixing this date?

A. That is rather indefinite, Mr. Fields. I cannot tell you that, because I am rendering bills to Mr. Shappirio every once in a while, and I don't know exactly when I did look at the books, so far as his bills are concerned.

Q. Have you ever looked at your books specially to ascertain the date when you first went down there? A. No, sir.

Q. Was it not very warm weather when you first went there? A. Yes; it was rather warm. So far as my recollection goes, it was a warm day; but, as I left my key in the shop and went down on the cars, we had some walking, and that, I suppose, had something to do with making the weather feel warm.

Q. As I understand all of your testimony that has been given, you don't pretend to fix the exact date within a month or
425 two of the time when you first went down there? A. No, sir. I know the first time I went down was before he bought the property, because he asked me to go along with him to see whether, in my judgment, the property was worth the amount he was supposed to pay for it—the price asked for it. That is all I know about it.

Q. You think it was before the sale on account of the statements he made to you? A. I know that part positively, but the reason I know that is because Jake had bought one piece of property previous to that and several pieces he has looked at, and none he ever bought without asking my opinion. The residence he lives in now in Le Droit Park he would not buy until I looked at it, and I told him I thought he was getting a fair bargain. I don't believe he has ever made—of course I don't know positively, but I don't believe he has ever made any transaction in real estate in the last five years he has not [illegible]d my opinion on first; in fact I am satisfied of it, because I kno[illegible] about what he has got and what he has bought.

Q. Do you know whether at the time we first went down he had agreed to buy the property? A. No; I don't know that. I do know it was under exactions, provided it suited him, and he asked me to go along with him and see whether the property was worth the price, $6,000. I think that was the price stated of the prop-
426 erty. I am not certain of that, but I think that is what it was, to the best of my recollection. There was nothing really to make me set my mind on the price.

Q. Or on the date? A. No, sir; only in a general way. That part I can fix all right, provided I can examine my books. I can swear to the date, provided I can examine my books.

Redirect examination.

By Mr. SIMMONS:

Q. You stated how long you have been in business, Mr. Galloway. State what has been the extent of your business in amount, say for the last year. What was the amount of your contracts in the past year? A. $150,000, perhaps. I have one building alone of $70,000.

Mr. FIELDS: I object to that as immaterial.

Recross examination.

By Mr. FIELDS:

Q. Have you ever been a witness before, Mr. Galloway? A. In a case of this kind?

Q. Any kind of a case. A. Yes, I am sorry to say. I was called up in the police court twice, but I believe I cleared the people, although they were supposed to have stolen something from me, because I didn't know anything about it.

427 Q. Have you ever been a witness in a civil case? A. Not from my recollection.

Q. Have you ever testified as an expert? A. I got in a case of a building.

Q. Have you ever testified as such? A. Once only.

Q. Have you ever testified as a witness about facts concerning buildings? A. No, sir; I was summoned some ten or twelve years ago, and I forget the exact time, whether—just the same as we are in now; not before a court—in a contract that was not carried out; and I was summoned contrary to my wishes and was made to testify as to whether the party carried out the contract or not. I believe that is the only case that I was concerned in. Hamilton & Colbert had me the other night and when Colbert got hold of me he told me to clear out. He says, You are no good.

THOMAS F. GALLOWAY,
By J. A. SWEENEY, *Examiner.*

428 At the same time and place also appeared CHARLES A. CAMPBELL, a witness produced in the same behalf, —, being first duly sworn, testified as follows:

Direct examination.

By Mr. SIMMONS:

Q. Please state your name and residence. A. Charles A. Campbell; address, care of Barber & Ross.

Q. State what was your business in 1893. A. I was chief clerk for my father in the lumber business on 11th street near the corner of N.

Q. Do you know Mr. George Goldberg, who used to keep a couple of stores down on 11th street, 1245 and 1247? A. Yes; I do.

Q. State whether or not he ever purchased any material from your father during the summer of 1893, and for what purpose, if you know, that material was used. A. During the year 1893 my father hauled a lot of dirt from the lot on which the building was built, and just after he finished hauling the dirt Mr. Goldberg took out a permit for the erection of a rear building, and he came to us with a carpenter and asked us to let the carpenter have what material he wished, and, as I was always figuring on those small contracts, I figured on it and let the carpenter have what he wished.

429 Q. Do you know what kind of material it was? A. Well of course I cannot remember exactly what material it was, but it was for a rough shed, so far as my recollection goes.

Q. Do you remember when your father had the bank you speak of removed from this property? A. Yes; I remember it distinctly.

Q. How long was that before the shed was built? A. I don't remember the exact time, but it could not have been very long.

Q. Do you know where the bank was removed from; how close it was situated to Mr. Goldberg's store or house? A. In the rear of this house on 11th street. There was an alley ran through there, and the lots on which we removed the dirt were between this alley and 10th street.

Q. You say that the lot from which he removed the dirt was between the alley and 10th street? A. Yes; I think that is correct.

Q. When was the alley graded down; when was it cut down? Was the alley cut down at the same time you removed the bank? A. I think the bank extended over a portion of the alley.

Q. How far was that bank from the back part of Mr. Goldberg's store? A. Of course, in the rear of the store they had quite a yard. I think all those houses had quite a long yard, and
430 I should say that the bank was from sixteen to twenty feet.

Q. From his house? A. Yes; of course, I cannot say positively.

Q. You are not positive about that? A. No.

Q. Do you know who paid for the lumber ordered by Mr. Goldberg? A. Mr. Goldberg paid for it himself.

Q. How long after he ordered it was it before he paid for it? A. I cannot state just how long, but it could not have been very long. It was soon after the completion of the building. The reason why I remember this case distinctly was the fact that when he came to pay the bill he asked us to make a rebate or reduction, and father came to me at the time and asked me how I figured it. On being told it was figured very close, he refused to take off a cent, and after considerable conversation Mr. Goldberg settled the bill. Of course, I cannot say positively whether he settled it in full at one payment or not, but if it was settled in two payments they were made very close together.

Q. Do you know what the bill was? A. It could not have been a very large amount. I cannot state just exactly the amount now. It has been a long time. My recollection is it was just a small building.

431 Q. Did he state to you for what purpose he wanted the lumber? A. I cannot say just what the conversation was before the lumber was purchased. He asked us if we could furnish the lumber, and I told him yes, and we did furnish it.

Q. Did you see the building he erected there afterwards—the shed or stable? A. Yes; I suppose I seen it a number of times.

Q. What appeared to be the size of it? A. I cannot tell distinctly as to that.

Q. I show you Exhibit "E" that is filed in this case, which has

been testified to be a photograph of the shed built on the back part of this lot in 1893 and built on the back part of the ground in question where the grading was done. Look at that and state whether or not you recognize it as the frame shed you refer to. A. Well, that is a picture taken from the interior of the yard, as I see it, and my view has always been from the outside.

Q. You cannot tell from that whether it is or not? A. Well, that looks very much like it. I can recognize this brick building quicker than I would the frame shed (indicating), or, in other words, I recognize the shed as being the shed from knowing the brick building, because I know right below the shed and adjoining the property there was a brick building, so I think I would be
432 positive in stating that is the shed.

Q. How long did you remain there in that neighborhood? When did you leave there or move from that place? A. As I recollect, we left there about 1895.

Q. Did Mr. Goldberg when he came to buy this lumber have any one with him? A. Well, I cannot say now the first time he came to negotiate for the lumber whether the carpenter accompanied him or not. He came several times, in fact. He often came with a carpenter to select some of the stuff himself.

Q. How long did it take the carpenter to build the place? A. I cannot say positively.

Q. Did you furnish the nails and hardware for the same place? A. Well, the nails may have been purchased from John T. Campbell & Son. My brother, J. Frank Campbell, and my father were engaged in the hardware business on the opposite side of 11th street, and of course I could say nothing about that, although we were often in the habit of going over there and having the nails charged to us and selling the nails and lumber and charging it all as one account, but I cannot recollect now whether we furnished him the nails or not.

Cross-examination.

By Mr. FIELDS:

433 Q. Who was the carpenter with Goldberg in 1893? A. I don't recollect the gentleman's name and I doubt whether I would know him if I saw him. Of course, we looked to Mr. Goldberg and we knew him, and the carpenter's name I cannot state.

Q. How do you know this transaction took place in 1893? A. I know it was about two years before we left 11th street and I know we left about 1895, because just before the Spanish-American war I started in business for myself, and that was about three years after we left 11th street.

Q. Did you examine your books to ascertain the date? A. No, sir; my books have all been destroyed.

Q. How often did Goldberg buy lumber from you? A. Well, he may have bought a piece of lumber now and then, but taking it as a whole he bought very little. Of course, all those people along

there bought lumber for repairs from us, but I don't remember of selling him any material for any other building except that one.

Q. Do you remember ever having sold him any material at all before or after this particular transaction about which you have testified? A. Oh, yes; I remember waiting on him for small pieces of material he would use in the store for fixing shelves, but, of course, I cannot remember how many times. I know we did sell him that way.

Q. How long was your firm located down there? A. For
434 quite a number of years; just how many I cannot say; as far back as I could remember; from the time I was eighteen, back.

Q. Did you furnish the lumber for the two buildings when they were erected, or either one of them? A. Which?

Q. 1245 and 1247 11th street. A. It may have been furnished, but if it was it was before I went to work for my father.

Q. Do you know when 1245 11th street was erected? A. No, sir.

Q. Were you engaged in business when it was erected? A. That I cannot say. If I was I don't recollect the erection of 1245.

Q. Do you know when the shed in the rear of 1245 was constructed? A. I cannot swear as to the shed of 1245. Until you mentioned 1245 I could not say that that was Mr. Goldberg's property, but I can swear we furnished Mr. Goldberg material for a shed.

Q. For a shed? A. For this shed on 11th street within a few doors of N, but I have never paid any attention to his number.

Q. Do you know or can you state positively what use was made of that lumber which he got from you? A. Yes; I can swear that the lumber we furnished him was used by him to build a shed in the rear of his house.

435 Q. Which house? A. The house occupied by him on 11th street at that time.

Q. There were two houses? A. Well, as I told you before, I cannot say in the rear of which house the shed was, because I never paid any attention to the number of Goldberg's houses.

Q. Who delivered the lumber? A. As you see by the picture, it was very close to the rear of our mill-work building, and so may have been delivered on a one-horse wagon, or some of the men may have taken it over at different times on a hand truck.

Q. Did you see the lumber after it went out of your place? A. Yes; I was there watching the erection of the building. I would walk out and watch them, because at that time I had charge of the mill-work department and would walk out in that way and watch it.

Q. Did you see the particular lumber you sold used in the shed? A. Yes. Of course, I would not say he might not have taken a board or two boards and used them in the cellar of his house, but I can say the best portion of the lumber was used in the shed.

Q. Can you tell me what shed? A. I cannot tell you any more than it was Goldberg's shed.

436 Q. Was there any shed there when the lumber was obtained? A. Well, there may have been a shed there before he began building, but if there was he had torn it down.

Q. What is your recollection, whether or not there was a shed there when he bought this lumber? A. I cannot recollect.

Q. Well, you say you can recollect that the lumber was actually used in that shed and you saw it being used there. Cannot you also tell me whether, when the lumber was brought, there was any shed there then? A. I can say this much: If there had been a shed put there it could not have been there very long, because this building was erected soon after we removed the dirt, and if there had been a shed there before they removed the dirt it would be quite an elevated structure.

Q. What was on the ground? A. Of course, I cannot say exactly what was on the whole ground.

Q. Can you say whether the ground was vacant or occupied? A. The best portion of it was vacant.

Q. Nothing at all on it? A. To the best of my recollection, there was nothing on the best portion of it. Of course, there may have been one or two little buildings. I cannot recollect as to that.

Q. Do you recollect seeing a shed in the rear of 1245? A.
437 Yes; I think I can recollect that all right.

Q. What kind of a shed is that? A. Well, like most rear sheds, a rough board shed.

Q. How large? A. As to the exact size I cannot say.

Q. Give me your best judgment. A. There would be no use for me to guess at it. Of course I know it could not have been a very large affair.

Q. Will you tell me how wide it was and how high, about? A. No, I cannot tell you the exact size, but I will say it could not have been over eight or ten feet high, and somewheres in the neighborhood of twelve or fourteen or sixteen feet in length.

Q. How large is the other shed? A. I never paid any particular attention.

Q. Was it larger or smaller than the shed of 1245? A. I cannot say.

Q. Do you know how high it is? A. No, sir; I cannot state positively how high it is.

Q. Are the two sheds on the same line? A. That I cannot say positively.

Q. Do you know when 1245 11th street was erected? A. No, sir; I do not.

Q. Was it constructed at the time you saw this shed being built?
A. As I say, I have no recollection of the construction of 1245
438 at all. My only recollection of any building for Mr. Goldberg was a shed, to which I have testified.

Q. And if Mr. Goldberg actually had two sheds you don't know, as I understand you, for which shed this lumber was used? A. Well, of course, I cannot, for the reason, as I say, I never noticed Goldberg's number, whether it was 1245 or 1243 or 1247.

Q. When was the ground graded? A. Of course, I cannot say just what portion of the year, but it was during the year 1893. Some of it may have been removed a little previous to that—that is, the latter part of 1892—but my recollection is that most of it was removed in 1893.

Q. Did you know old Mr. Gates? A. Mr. John Gates?

Q. Yes. A. Yes.

Q. Did he ever buy any lumber from you? A. Yes; we often sold him lumber just the same as Mr. Goldberg, for repairs and for shelving in his store.

Q. Did you sell him any lumber in 1893? A. We may have; yes.

Q. Did you sell lumber to Gates quite often? A. Yes; Mr. Gates bought lumber quite often.

Q. In large quantities? A. That is, on repair jobs I spoke of; not large amounts.

Q. Did you know a carpenter by the name of Selby?

439 A. I might know his face, but I don't remember his name, we had so many there.

Q. Can you recollect the name of any carpenter that worked for Mr. Gates? A. Not by the name I cannot; no, sir.

Q. Do you know that the ground in the rear of 1247 11th street in 1893 was in the possession of Mr. Gates?

Mr. SIMMONS: I object to that question on the ground it is immaterial, and on the further ground that the evidence here shows that Mr. Gates turned the possession of this ground over to Mr. Goldberg in 1893 and it was not at that time in the possession of Mr. Gates.

A. No, sir; I do not know.

Q. From whom did your father get permission to haul the gravel from that lot? A. That question I cannot answer, as he made all the arrangements and attended to the hauling of the gravel himself, and I had nothing whatever to do with it.

Q. Do you know how much Goldberg paid for the lumber he got in 1893? A. You mean the lumber for the shed?

Q. This particular lumber. A. No, sir; I say I don't remember the exact amount.

Q. Did Goldberg tell you when he came there that he wanted this lumber for the shed, or did he state the purpose at all?

440 A. That I cannot recollect any more than he came there with a carpenter and told us to let the carpenter have what he wished for the erection of the building in the rear of his house.

CHAS. A. CAMPBELL,
By J. A. SWEENEY, *Examiner.*

441 At the same time and place also appeared LEO SIMMONS, counsel for complainants herein, appearing in rebuttal in their behalf, and testified as follows:

About five or six, probably ten days ago, I called on Mr. Guy, of

Guy, Curren & Company, and asked Mr. Guy if he had since his testimony seen Mr. Richold, and whether or not he had a conversation about what he had testified to, and he said he had. I asked him if he would not go and correct his testimony, and he said, "Now, look here, you lawyers always get a man mixed up. Now, I will tell you how that was: I saw in the record that Goldberg had sold his property to Shappirio, and, inasmuch as Goldberg was indebted to us, we were necessarily interested in the sale;" and he said, "Mr. Richold came in here and offered to sell me this property and some other. He came in here often to see me or see the firm. I don't know whether I did or not, but I may have said to him that Goldberg would buy the property back. I thought it was simply a family affair, and that the property was put in Mr. Shappirio's name for a purpose. I didn't know what they were up to, and I was a kind of suspicious." I asked him if he would repeat that to the examiner in correcting his testimony, and he said he wouldn't bother about it. I said I was going to recall him, and he said, All
442 right. I asked him whether he would admit that, and he said he would not admit anything. I asked him if he would admit having made such a statement to Mr. Richold and he said he would not deny it. I asked him what he would say and he said, "To the best of my recollection, I didn't make any such statement to him and I didn't make any such statements about Goldberg's purchasing the property." I asked him then if he would deny on being recalled and re-examined that he had made such a statement to Mr. Richold, that he said to Mr. Richold that Mr. Goldberg would re-purchase the property or buy the property back, and he said, No, he would not deny it, but to the best of his recollection he did not say any such thing.

I make this statement to corroborate the statement of Mr. Richold, which he made today, that he had a conversation with Mr. Guy on the subject.

LEO SIMMONS,
By J. A. SWEENEY, *Examiner.*

443 Also appeared JACOB I. SHAPPIRIO, one of the complainants herein, *was* recalled in rebuttal in their behalf.

Direct examination.

By Mr. SIMMONS:

Q. Did you have a conversation with Mr. Guy lately? A. I did.

Q. State what he said to you in relation to his testimony. A. I happened to be in Messrs. Guy, Curren & Company's place about—to the best of my recollection, it must have been about the fifteen- or sixteenth of September, and I asked him regarding that statement he made to Mr. Richold, and he said, "Well, I don't recollect making any such a statement." And I said, "Why, Mr. Richold told me positively you said that Goldberg would buy the property back again." And he said, "I may have said something in regard

to that on account of Goldberg dealing with us, but he owed us considerable money, and you know how we thought about it. We thought possibly it was something about business and naturally we looked after it. I might have made some statements, but that is all my recollection. Positively what I said I cannot remember." That is what he said to me, that on account of business, &c.

No cross-examination.

444 Mr. SIMMONS: At the request of the counsel for the defendants and in order to save any further testimony on the part of the defendants, I will admit that the defendants did not, individually or collectively, go to the title company to make any orders in relation to the papers that were being prepared in the transfer of the property involved in this suit, but this in no way concedes they did not do so through their agent, Mr. Richold.

STIPULATION.—It is agreed that the case be now closed on both sides, unless notice to the contrary be given on or before Saturday, October 19th, 1901.

JACOB I. SHAPPIRIO,
By J. A. SWEENEY, *Examiner.*

445 MONDAY, *October* 21*st*, 1901—3.30 o'clock p. m.

Met, pursuant to agreement of counsel, on Monday, October 21st, 1901, at 3.30 o'clock p. m., at the same place.
Present: Same counsel.

Whereupon SOLOMON LEWIS was recalled by the complainants.

Mr. FIELDS: He must be resworn.
Mr. SIMMONS: No; he has been sworn and I am calling him for further examination, but I don't object to his being sworn over if you want it done.
Whereupon said witness was again sworn and testified as follows:

By Mr. SIMMONS:

Q. Mr. Lewis, you have been called in this case to testify as a witness for defendants. I desire to ask you if you know anything about the little piece of ground that is in dispute here, in the rear of Mr. Goldberg's premises where he lives. A. I don't know anything previous to the transaction—that is, I never knew anything about it until I was called some time ago. I was requested to come over there to see them. My mother-in-law lives there with them and my sister-in-law, and on one occasion they asked me if I would go to see Mr. Darby and try to buy that piece of property.
Q. Now, when was this? A. Indeed I cannot tell you.
Q. How many years ago? Is it a year ago or less? A. I
446 cannot tell you that. I really don't remember. Now, that fell from my memory, upon my word, to such an extent that I cannot recall it.

Q. See if you cannot refresh your memory on that. Was it prior to the last election, the last presidential election? A. I cannot say.

Q. It was prior to the time that little piece of property was conveyed to Mrs. Goldberg?

Mr. FIELDS: Question objected to as leading.

A. Prior to the time, of course, it was sold to Mrs. Goldberg.

Q. Now, let us see if you cannot give us somewhere near the time how long before it was conveyed to her. It was conveyed to her about a year ago, or just about a year ago from now? A. It was some months.

Q. It was some months prior to that? A. Prior to the conveyance to her.

Q. Now, you say you were asked to come over there. Who asked you to come over? A. I cannot say exactly who asked me, but as a rule if I meet any of the members of the family they ask me to come over to see them. I have been asked that this morning.

Q. State, to the best of your recollection, who asked you to come at this particular time to see about the property. A. I think
447 it was Mrs. Goldberg. She came up to see me. She came to my house. She visited us very often and she asked me to come over.

Q. She asked you to come over? A. Yes.

Q. Did they not come to your shop and ask you to come over?

Mr. FIELDS: Objected to as leading.

A. No.

Q. Did Mr. Goldberg go to your shop and ask you to come over there and see about this piece of property?

Mr. FIELDS: Objected to as leading.

A. No, sir; he did not.

Q. Did you ever talk to Mr. Goldberg about the property? A. I talked there with him—now, that is, with Mr. Goldberg. Mrs. Goldberg and my mother-in-law might have been there and my brother-in-law might have been there, but I cannot figure out exactly that particularly, because I have attached so little importance to it that I don't remember anything about it except being in that conversation with them.

Q. Did Mr. Goldberg ever talk to you about it at all? A. Not prior; no, sir.

Q. Did he ever talk to you about it in the presence of his wife? A. Yes.

448 Q. What did he say? A. Nothing in particular. He simply asked me what I said already. They both asked me to go to see Mr. Darby to buy this piece of ground.

Q. And he told you what to pay for it?

Mr. FIELDS: Objected to as leading.

A. Well, he did; yes.

Q. What did he tell you to pay for it? A. If I remember right, he told me I can go from $150 to $200; something like that.

Q. Who told you that? A. Both of them. I cannot remember, because, as I say, I attached so little importance to it that I never made a point to remember these things.

Q. What else did Mr. Goldberg say, if anything, about this piece of property being a part of the premises there? A. Nothing that I know of.

Q. State whether or not he said anything to indicate that it was of great value to the house. A. No, sir.

Q. State whether or not he said anything to indicate to you that he wanted to buy this particular piece of property especially. A. It is natural if he would not want to buy it he would not send me there, and would not ask me to go to see Mr. Darby.

449 Q. Have you talked to anybody about this case, with your sister-in-law or brother-in-law, or have you talked with Mr. Goldberg or their attorney about this case since I saw you a few days ago? A. Perhaps I did in a general way, but not in particular. In commenting upon the facts I spoke to Mr. Shappirio about it. I spoke to you about it and I spoke to Mr. Fields about it, but I cannot remember particularly.

Q. You told them you were going to testify about it? A. No, sir; I did not tell Mr. Fields since you came to see me.

Q. Since this conversation? A. No, sir; I haven't seen Mr. Fields since.

Q. What time was it, in the summer or winter, when they asked you to come to see about this property? A. I think it was in the summer.

Q. You think it was in the summer? A. Yes.

Q. And it was two or three months before the deed was made to Mrs. Goldberg? A. I didn't state the exact time because I don't know.

Q. What is your best recollection? A. I just might as well tell you six months as a year, or three months, because I don't remember.

Q. Was that the only time you talked with them about this property? A. Yes, except reporting to him what I heard from Mr. Darby.

450 Q. What did you report? A. I told him that Mr. Darby—the first interview I had with him was that Mr. Darby told me that he would have to see Mr. Clark, his father-in-law, I believe; and then Mr. Goldberg asked me, "All right," he says, "when did he tell you to come?" I says, He didn't say any particular time. Then Mrs. Goldberg came down, I think, to the shop once and asked me whether I had been. I said, "No, I hadn't, but I can go now," and I did go down to see him. The conversation I had with Mr. Darby I don't remember, but I reported it to Mr. Goldberg, and we thought that ended it up.

Q. Did you write a letter to Mr. Darby? A. I think I did.

Q. Do you remember what you said in that letter? A. Indeed, I do not.

Q. Was it a proposition to purchase, or making an offer? A. Yes.

Q. In your conversation with me the other day, is it not a fact you did state to me that Mr. Goldberg told you he wanted to have this piece of property, and it was very desirable to have it for his back yard?

Mr. FIELDS: Objected to as leading.

A. I beg your pardon; no, sir.

Q. Did you ever tell Mr. Shappirio that?

Mr. FIELDS: Objected to as leading.

A. No, sir; not that I know of.

451 Q. Well, now, state whether or not you did state such a thing as that.

Mr. FIELDS: Objected to as leading.

A. No, sir; I did not.

Q. Did you state either to Mr. Shappirio or to me that Mr. Goldberg had said to you he wanted this piece of property; that it was very valuable to his premises?

Mr. FIELDS: Objected to as leading.

A. I did not. I told you and I told Mr. Shappirio that Mr. Goldberg or Mrs. Goldberg asked me to see about purchasing that piece of property, but whether it was very desirable to him or whether he needed it very bad, or what, I didn't know; I could not say because I didn't know, and, naturally, I could not say.

Cross-examination.

By Mr. FIELDS:

Q. Did you see Mr. Darby about this strip of ground at the request of Mrs. Goldberg or Mr. Goldberg? A. They were both there, and I think that they both asked me to go to see about it. It was between them. Now, whether she was the spokeswoman or he was the spokesman I cannot say, but they were there, and perhaps the other folks were there as well; but it was between them, anyhow; they asked me. Now, whether it was her or him I really could not say.

452 Q. Did he ever come to your shop and ask you to attend to it? A. No, sir; that was the only conversation I had, up to their house.

Q. Did Mrs. Goldberg ever come to your shop about it? A. Yes; she did, after I saw Darby.

Q. Did you ever have any talk with Mr. Goldberg about the purchase of this piece of ground when Mrs. Goldberg was not present? A. I don't think I did, because the only conversations I had were about twice, and it was at their house and she was there. Of course I always came there at night.

Q. Did you go to see Mr. Darby about the matter of purchasing it for Mrs. Goldberg or Mr. Goldberg? A. For Mrs. Goldberg; that was my understanding.

Redirect examination.

By Mr. SIMMONS:

Q. Now, did Mr. Goldberg tell you whether it was to be purchased for his wife? A. Yes.

Q. He told you that? A. Yes; he told me that.

Q. When did he tell you that? A. During this conversation.

Q. During this conversation? A. Yes; I think during the first conversation.

453 Q. Now, what did he say in the second conversation? You say you had two conversations with him? A. Now, that is really a question I cannot answer if I would be—if that would be my own interest, or if I knew I would be called upon to testify, I might have made a special business of my own to remember, but it was just a conversation, and I paid no more attention to it than nothing, and the consequence was I don't remember these things—not minutely, anyway.

Q. Did Mrs. Goldberg state what she wanted it for? A. What she wanted with it?

Q. Yes. A. No, indeed. She did not, and I didn't ask her.

Q. You knew they were occupying this property in front?

Mr. FIELDS: Objected to as leading.

A. Occupying the property in front?

Q. In front of this piece of lot? A. The piece of lot?

Q. Yes. A. I had been in the yard and saw. I have been there several times—up to the house.

Q. Did they point this piece of ground out to you ever before? A. No, sir.

Q. Did they tell you where it was situated? A. Yes; in the rear of their property.

Q. They told you it was in the rear of their property? A.
454 Yes.

Q. Who told you where it was situated? Who described it to you? A. I will have to give the same answer, because I don't know. I know they told me it was a piece of ground back of their premises, and that is all I remember; and they asked me to go back and see Darby, and I went to see Darby, and I reported to them.

Q. Did they say it was a part of their back yard?

Mr. FIELDS: Objected to as leading.

A. No; they did not. They simply told me a piece of property in the rear of their house. That is all I know.

Q. Did you know at the time what piece of property it was? A. I didn't know, except since the controversy. I know it is the rear—the yard—but I didn't pay any attention.

Q. Did you talk to Mr. Goldberg about it twice—that is, at two different times? A. With Mr. and Mrs. Goldberg.

Q. Two different times? A. Yes.

Q. Both times were they at the house? A. At the store. I used to go down very often.

Q. Now, the first conversation, you say, was the invitation
455 for you to come down to see about it? A. I always go down by invitation.

Q. State whether or not they asked you to come down and visit them or whether they asked you to come down to see about this piece of ground. A. I can answer that, because Mrs. Goldberg comes to my house very often naturally to see her sister. Mrs. Lewis is a sister to Mrs. Goldberg, and whenever she comes she says, Lewis, why don't you come down? Well, sometimes I say I will come down as soon as I feel like it. That very time she asked me to come down, as she thinks she wanted to talk to me about some little business. That is about it.

Q. She was at your house? A. Yes.

Q. Where is your house? A. 110 E street.

Q. Northwest? A. Yes.

Q. And her house is away down by the bridge on Pennsylvania avenue? A. On 11th street.

Q. How long was it after she told you she wanted you to come down there before you went to see Mr. Darby? A. How long before?

Q. Yes. A. I cannot tell you.

Q. She was at your house, you say. Did you go down the
456 same night she asked you? A. No.

Q. How long after that? A. Indeed I don't know.

Q. Was it a day? A. Several days; two or three days.

Q. When you went down, how long was it after that before you saw Mr. Darby? A. Perhaps a day or two.

Q. And then after you saw Mr. Darby you went back again to them? A. Then a day or two elapsed again. I was not in a big hurry.

Q. And you told them what Mr. Darby said? A. Yes.

Q. And Mr. Goldberg told you to offer $150 or $200? A. I don't know the exact amount.

Q. Something like that? A. Yes.

Q. To the best of your recollection, you made an offer to Mr. Darby in writing? A. Yes, but I don't know what I offered him.

Q. And about three months after you made the offer to Mr. Darby in writing the deed was passed? A. I lost all sight of it because I did not interest myself any further, and I don't know anything further about it.

457 By Mr. FIELDS:

Q. Have you any bias, prejudice, or partiality in this case either for or against the complainants or defendants?

Mr. SIMMONS: I object to that question on the ground it is not directed to the testimony brought out by the complainants, and on the ground it is immaterial and incompetent.

A. None whatever.

SOLOMON LEWIS,
By J. A. SWEENEY, *Examiner.*

458 It is agreed that the attorney for the complainants may testify as to the date that the permit was issued to build premises 1245 11th street, and that his testimony as to what he found of record and the date of the permit shall be considered as competent evidence, subject to the right to rebut it if it shall hereafter be found to be incorrect.

Whereupon LEO SIMMONS, counsel for the complainants, appeared as a witness on their behalf, and who, having been duly sworn, testified as follows:

I will state I examined, I think it was last Thursday—yes, it was last Thursday I examined the records at the office of the inspector of building-, in the District building in this city, and I found that there was a permit issued to Mr. George Goldberg. It was taken out by a man of the name of J. J. Williamson, a builder, for the purpose of erecting premises 1245 11th street southeast. The permit was issued on the 14th day of September, 1892, and it was permit No. 635 of that year, and the amount of the expenditure for its construction was placed at $1,400.

LEO SIMMONS,
By J. A. SWEENEY, *Examiner.*

459 Whereupon JACOB I. SHAPPIRIO, one of the complainants herein, was recalled in their behalf.

Direct examination.

By Mr. SIMMONS:

Q. State what, if anything, Mr. Lewis, the former witness here, told you in reference to Mr. Goldberg's connection with this lot so far as any request from Mr. Goldberg made to him and any statement that Goldberg made in his presence, and what time it was made and where.

Mr. FIELDS: I object to any testimony upon this subject for the reason that the witness Lewis has been called and offered by the complainants upon the subject-matter of his testimony as a witness in behalf of the complainants, and it is not competent for the complainants to contradict their own witness.

Mr. SIMMONS: This evidence is offered for the purpose of showing what statements had been made by the witness Lewis to the attorney for the complainants and the complainant, the witness, himself, and that the statements that he made are partially contradictory to what he has testified here under oath; and the evidence is further offered for the purpose of laying the whole facts, as attorney for the complainants has endeavored to do, before the court in connection with this case.

Mr. FIELDS: I still object to any testimony whatever
460 which contradicts or tends to contradict the testimony of the witness Lewis which has been given today, and any effort to lay the entire facts of this matter before the court cannot render

competent any matters which are not allowable by the rules of evidence and tend, therefore, only to encumber the record.

Mr. SIMMONS: The evidence would not be offered except for the fact that the witness has testified already as a witness for the defendants, and it is shown that he is connected by marriage with one of the defendants, being a brother-in-law of Mrs. Goldberg.

Q. Now, Mr. Shappirio, you can go ahead. A. Right after Mr. Clark testified here in behalf of the complainants that the letter was addressed to him or Mr. Darby by Mr. Lewis for Mr. Goldberg, I went over to see Mr. Lewis either the day following or the day after that, and I asked him about it. He said, "Yes, I wrote a letter to Mr. Clark or Mr. Darby for Mr. Goldberg." And then I asked him who sent him; and he says, "I will tell you the whole thing how it happened." He says, "One day"—it was customary for them to come down there. "Mr. and Mrs. Goldberg used to come by the shop, and they asked me to come down to visit them, as being a brother-in-law." And he says on one occasion Mr. Goldberg came by the shop and he told Mr. Lewis to come over to the house, as he would like to see him in regards to that piece of ground back of his house, to try to purchase it from Mr. Clark or Mr.
461 Darby—I don't know which one—for him; and he went over that evening or the next evening—I don't know which evening he said—that he went over there after that and spoke to him. And I asked Mr. Lewis who was the one who sent him over to see about this piece of ground and he said, "I cannot tell you that exactly, which was the one." He says they were both present at the time, and he says, I wrote a letter for him and I did not go to see Mr. Clark until some time afterwards.

By Mr. FIELDS:

Q. Clark or Darby? A. Clark or Darby. I don't know which one he went to see or wrote a letter to, but he made the offer to the one that Mr. Goldberg told him, but he did not remember the amount of money he was to offer him. But he says the last he heard of it Clark came down to the shop, and he met him on the street, and he told him exactly what he would take for the property; but he made the remark that he thought it was ridiculous; that that was more than Goldberg would pay him. That was the end; that is all of it. That is what Mr. Lewis told me.

Mr. FIELDS: The answer of the witness is objected to for the reasons above stated.

By Mr. SIMMONS:

Q. Did he say anything to you about any statement made
462 by Mr. Goldberg about the property being very valuable to him?

Mr. FIELDS: I object to that as leading and for the reasons above stated.

A. Yes; he told me that Mr. Goldberg said at the time he told him to go down to see Mr. Darby or Mr. Clark—I don't know which one he told him to see—that that back ground was very valuable to him to have an outlet to the alley, and that is why he wanted him to go down and try to buy it for him.

Cross-examination.

By Mr. FIELDS:

Q. Did Lewis state to you whether his conversation with Goldberg was before or after the sale to him? A. I asked him that question. He answered me that way. I says, "How long before was it that you went to see or wrote to Mr. Clark or Darby regarding that piece of ground?" and he says, "That I cannot tell you, but it must have been before you bought that piece of property, because for the simple reason it would not be any value to him after he sold you that piece of property." I asked him that question; yes.

JACOB I. SHAPPIRIO,
By J. A. SWEENEY, *Examiner.*

463 Whereupon LEO SIMMONS appeared as a witness for the complainants and testified as follows:

I will state I called on Mr. Lewis, I think it was Saturday afternoon last, and asked him if he made the statements to Mr. Shappirio that Mr. Shappirio now states, and he said he told Mr. Shappirio practically what Mr. Shappirio stated; and he said to me that Mr. Goldberg did call past his shop and ask him to come down to see about this piece of property, but whether Mr. Goldberg told him to go and buy it or Mrs. Goldberg told him to go to see about purchasing it, he didn't know, because they were both present at the same time and both of them talking about it. And he said also that Mr. Goldberg said that the piece of property was very valuable to him and he wanted to have it. Those are the words he told me; otherwise I should never have called him in the case.

Cross-examination.

By Mr. FIELDS:

Q. Did Mr. Lewis tell you whether this occurred before or after the sale to Mr. Shappirio? A. He told me it was some time, he supposed, before Mrs. Shappirio got a deed to the property from Mr. Clark, but he didn't know what time it was or could not tell
464 the time.

Q. Did you ask Lewis whether it was before or after the sale to Shappirio? A. I asked him if he knew what time it was, and his answer was, "It must have been before she got the deed from Mr. Darby." That was his answer; but he could not tell how long or what time it was prior to that, because he paid very little attention to it. Those were his words.

Q. Did you know Mr. Shappirio had called around to see Mr. Lewis? A. Yes, I knew at the time. Mr. Shappirio told me he went to see him, and after he told me what Mr. Lewis informed him, I went over and told you I wanted to strike out our stipulation about what he would testify to, and I asked you to produce the letter and let me see it. I had never seen the letter at all and never read it and I don't know what it contains—what Mr. Lewis wrote to you.

Q. Did the defendants or their counsel know before you or Mr. Shappirio called on Mr. Lewis that you intended to do so? A. No; they did not and I didn't know Mr. Shappirio had called on him or would do so. I supposed the case, so far as he was concerned, was finished, and I didn't care to bother about that particular branch of the evidence any more; but after learning from Mr. Shappirio that Mr. Lewis had made that statement, I felt it
465 was my duty to let it go upon the record in that way.

Mr. FIELDS: The letter to which the witness has just testified, and which was written by Mr. Lewis to me, will be produced and filed, together with a duplicate of the original of my letter to him, to which his letter to me was his answer; and, further, I will state that this letter was produced by me at the last session, but it was not handed to complainants' solicitor.

Mr. SIMMONS: The letter there referred to by the witness Lewis as having been referred to Darby or Clark by Mr. Lewis was entirely different from the one written by Mr. Lewis to Mr. Fields, referred to.

That closes our case.

LEO SIMMONS,
By J. A. SWEENEY, *Examiner.*

466 *Testimony in Surrebuttal.*

Filed December 5, 1901.

In the Supreme Court of the District of Columbia.

MARY SHAPPIRIO, JACOB I. SHAPPIRIO
v.
MINNIE D. GOLDBERG, GEORGE GOLDBERG. } Equity. No. 22295.

Testimony on behalf of defendants in surrebuttal.

Met, pursuant to agreement of counsel, at the office of solicitor for defendants, in the Equity building, John Marshall place, on Friday, October 25th, 1901, at 3 o'clock p. m.

Present: Mr. Simmons, on behalf of complainants, and Mr. Fields, on behalf of defendants.

Mr. FIELDS: I offer in evidence the duplicate original of the letter of October 11th, 1901, addressed by me to Solomon Lewis, together with the reply of Mr. Lewis to this letter, to be marked Exhibits Surrebuttal Nos. 1 and 2 respectively.

Mr. SIMMONS: I object to both of those on the ground that they are immaterial and incompetent evidence.

Solicitor for the complainants requests the following admission, namely, that the records in Mr. Lansburg's office will show that the defendant Minnie D. Goldberg, or then Minnie D. Roginski, began work for him on November 2nd, 1889, at $5 per week, and that on September 20th, 1890, her salary was increased to $6 per week, and that on December 19th, 1891, it was again increased to $7 per week, and that her employment ceased at said place on April 1st, 1893.

467

Mr. FIELDS: I will make the above admission.

Whereupon GEORGE W. GOLDBERG, one of the defendants herein, being produced on their behalf in surrebuttal, testified as follows:

Direct examination.

By Mr. FIELDS:

Q. Mr. Goldberg, when did you take out the permit to construct premises 1245 11th street southeast?

Mr. SIMMONS: I object on the ground the evidence is incompetent, as the permit will show when it was taken out.

A. About the middle of September, 1892.

Q. Who was your builder? A. A fellow by the name of Williams, who has left town. He is no more here. I don't know what has become of him.

Q. How soon after the permit was issued did you commence to build it? A. Well, it took us a few days, you know, till we got everything ready, and I think it was about October we started in. There was a little delay on account of getting everything started.

468

Q. What time in October did you begin? A. I guess about the 1st. I cannot say exactly as to the day, but I think the first part of October.

Q. When was that building completed?

Mr. SIMMONS: I object to this testimony on the ground it is irrelevant and is not proper surrebuttal.

A. The building was completed in 1893.

Q. Was any shed erected in the rear of 1245? A. Yes.

Mr. SIMMONS: I want it understood, Mr. Fields, that my objection to this line of examination goes to all his testimony, that it is irrelevant and not proper surrebuttal.

Mr. FIELDS: I agree to that.

Q. Was the shed in the rear of 1245 constructed before or after the building 1245 was erected? A. That was constructed later on.

Q. What was the last work done? A. On 1245?

Q. Yes. A. The shed; that was the last part.

Q. Was the construction of 1245 and the shed in any manner delayed? A. Yes; it was delayed on account of the builder.
469 In fact, I was obliged to finish a great many things myself.

Q. How did the builder cause delay? A. Well, he overdrew money. He drew more money than was due to him, and he wanted more money yet, and I would not give it to him, and he stopped work a while, and then he started again, you know. That is the way the delay came in.

Q. Did he stop work more than once? A. He stopped several times.

Q. Was there any other cause which produced delay? A. Well, a little bad weather. Some days, you know, they could not work. It was in the fall of the year, you know. We started rather late.

Q. Did bad or cold weather have any effect upon any of the material used in the building——

Mr. SIMMONS: I introduce the further objection, in addition to what I have already stated, on the ground that the question is leading.

Mr. FIELDS: I haven't finished.

Q. (continuing)—so as to cause delay? A. I don't understand your question right. They had, for instance—the plaster-s could not plaster because it was bad weather, you know. The plaster-s could not plaster well because it might spoil, and we were delayed a few days on account of that, and we had some other little delays there on account of the weather.

470 Q. When was the building 1245 completed? A. Well, it was not completed until about 1893, in January or February—say January, the last of January.

Q. And when was the shed in the rear of 1245 completed? A. Well, that was in the last of January, too, or the first of February.

Q. Before the shed in the rear of 1245 was erected, was there any structure of any kind upon the rear ground? A. No, sir; none at all.

Q. When was the permit taken out for the construction of the shed in the rear of 1247?

Mr. SIMMONS: I object to that because the evidence has gone in to show what it is.

A. If I am not mistaken, that was in June, 1893; the 20th of June, I think.

Q. Was the fence which the complainants have shown was constructed on the ground in the rear of 1247 after it was graded placed there before or after the erection of 1245?

Mr. SIMMONS: I object to that question on the ground that it is leading, and on the further ground that the complainants have shown nothing about the fence being built prior to the last fence that was built last May or some time last spring.

A. This fence had been built by Gates long ago, before 1245 was built.

Q. Was the fence in the rear of 1247 still there at the time
471 the shed in the rear of 1245 was constructed? A. Yes, sir.

Q. From whom did you purchase the lumber which was used in the construction of the building 1245 and the shed in the rear? A. It was all bought from Campbell.

Q. Where was Campbell's place of business? A. It was right on the corner of 11th and N streets.

Q. What was his business? A. Well, lumber and hardware and such things like that used in buildings.

Q. Did Mr. Campbell have any employee in charge of his office at the time this lumber was purchased? A. At that time Mr. Tolson used to be with him. He keeps a lumber yard now in Anacostia.

Q. Were any sons of Mr. Campbell there at that time? A. There was a son there attending to the hardware business, and another smaller son, that was nothing but a schoolboy, was there.

Q. Did that other son attend to the business?

Mr. SIMMONS: I object to that on the ground he has not stated he has any knowledge of Campbell's business at all.

A. Well, I think he used to go to school. That is the best of my knowledge.

Q. Did you ever buy any lumber from this younger son? A. I cannot recollect.

Q. About how old did he appear to be in the beginning of
472 1893? A. He was quite a young boy. He looked to me very — like a schoolboy. I guess about fifteen or sixteen or something like that.

Q. During the time you owned and occupied the property Nos. 1245 and 1247 11th street southeast, how often did you purchase lumber from Mr. Campbell? A. Well, I cannot say that.

Mr. SIMMONS: I object to the question on the ground it is leading.

A. (continued). I used to buy now and then some little things we needed in the way of hardware, and sometimes a piece of lumber or something like that, but I cannot say for sure I did buy any.

Q. How frequently did you buy any?

Mr. SIMMONS: I object on the further ground that he stated in the examination-in-chief he never bought any lumber from Mr. Campbell, except for a shelf or something of that kind.

A. Of course, all the lumber for the house 1245 was bought from Campbell, and they used to go in there and buy sometimes a piece of shelving or something of that kind. I did not keep account, but all the lumber in the building and shed was bought from Campbell.

Q. Did you buy from Campbell all the lumber that you used in and upon those premises during the time you owned them or
473 occupied them? A. Yes; they were bought from Campbell.

Q. Did you ever know Mr. Campbell to haul gravel or dirt

from the ground in the rear of 1245 or 1247? A. He took some ground from 1247. In fact, he used to take ground from all around there wherever he could get it, because his place was rather hollow and he wanted to fill it up.

Q. Have you known him to take gravel from the ground between the alley in the rear of 1245 and 1247 and 10th street? A. Back to 10th street; yes; I frequently used to see his wagons hauling ground from there.

Mr. SIMMONS: No cross-examination.

Mr. FIELDS: That closes my case.

GEORGE GOLDBERG,
By J. A. SWEENEY, *Examiner.*

474 EXHIBIT SURREBUTTAL No. 1.

424.

Mr. Solomon Lewis, city.

DEAR SIR: In the case of Shappirio against Goldberg, testimony was offered on yesterday by Mr. Shappirio tending to prove that you called upon Mr. Darby regarding the purchase of the rear part of lot 2, square 977. It is claimed that your conversation with Mr. Darby was had at the instigation of Mrs. Goldberg, your sister, or Mr. Goldberg, her husband, and that you communicated your interview with Mr. Darby and the result thereof to her or her husband.

I desire to have you inform me as to whether or not you were acting in the matter of Mr. or Mrs. Goldberg with a view of avoiding having you called as a witness, which, I understand, Mr. Shappirio intends to do.

Please see me or let me hear from you about the above matters before three o'clock p. m. of Tuesday, October 15, 1901.

Very truly yours, THOMAS M. FIELDS.

EXHIBIT SURREBUTTAL No. 2.

424.

(Envelope.)

Solomon Lewis,
Sign painter and decorator,
908 D street northwest,
Washington, D. C.

(Stamp.)

THOS. M. FIELDS,
John Marshall Place,
City.

475 EXHIBIT SURREBUTTAL NO. 2.

WASHINGTON, D. C., *Oct.* 14, 1901.

To Solomon Lewis, sign painter and advertiser, 908 D street northwest, Dr.

Terms, cash.

To Mr. Thos. M. Fields, Esq.

MY DEAR MR. FIELDS: In answer to your communication of recent date in reference to seeing Mr. Darby about a certain piece of property, I beg leave to state that *that* I did go to see Mr. Darby about it by the request of Mrs. Goldberg and I did report the interview I had with Mr. Darby to Mr. & Mrs. Goldberg, but what such interviews I had or as to dates I do not remember, as I never attached much importance to it, hence I do not remember.

Respectfully yours, SOLOMON LEWIS.

476 *Final Decree Dismissing Bill.*

Filed December 16, 1901.

In the Supreme Court of the District of Columbia.

MARY SHAPPIRIO, JACOB I. SHAPPIRIO vs. MINNIE D. GOLDBERG, GEORGE GOLDBERG. } Equity. No. 22295, Docket No. 50.

This cause came on to be heard on December 5, A. D. 1901, whereupon the respondents, by their counsel, moved the court to compel the complainants to elect upon which of the two prayers, C and D, of their bill they would rely; which motion the court overruled; whereupon, after the complainants had read their testimony and the court having suggested the doubt that a case had been made out, the complainants having then read such portions of the respondents' — as they desired to use, on December 9, A. D. 1901, they moved the court for leave to amend their bill by striking out prayer C thereof; which motion was granted, and the court directed counsel to proceed with the argument, stating that the amendment would be considered as made, and that its formal writing could be made and filed later in the day. Thereafter the cause was argued at length by counsel for the respective parties upon the theory that the bill had been in fact so amended, and on the following day, December 10, A. D. 1901, upon the conclusion of the arguments, the court delivered an oral opinion that the bill should be dismissed on the ground that under the circumstances shown in evidence the female complainant
477 was not entitled to have rescinded the executed contract evidenced by the deed of conveyance to her. Inquiry was then

made by counsel for the respondents whether the formal amendment had been filed; whereupon counsel for the complainants stated that it had not been filed, and that their intention was not to file it unless the court compelled it, because their views of the law had changed. On December 11, A. D. 1901, the complainants filed the said formal amendment, and with it and attached thereto a motion to amend their bill by reinserting said prayer C therein; which motion is granted.

Thereupon, counsel not desiring to further argue the cause, it is, this sixteenth day of December, A. D. 1901, adjudged, ordered, and decreed that the bill of complaint herein be, and it is hereby, dismissed, and that the complainants do pay the costs of this suit, to be taxed by the clerk of this court, and that the respondents have execution therefor as at law.

By the court:

A. C. BRADLEY, *Justice.*

478 *Order Fixing Penalty of Appeal Bond.*

Filed December 16, 1901.

In the Supreme Court of the District of Columbia.

MARY SHAPPIRIO, JACOB I. SHAPPIRIO
vs.
MINNIE D. GOLDBERG, GEORGE GOLDBERG. } Equity. No. 22295, Docket 50.

From the decree passed herein this day the complainants note an appeal to the Court of Appeals of the District of Columbia, and move the court to fix the penalty of their bond for costs on appeal.

Thereupon it is, this sixteenth day of December, A. D. 1901, ordered that the penalty of the said appeal bond for costs be, and it is hereby, fixed at five hundred dollars.

By the court:

A. C. BRADLEY, *Justice.*

479 In the Supreme Court of the District of Columbia.

MARY SHAPPIRIO and JACOB I. SHAPPIRIO, Her Husband,
vs.
MINNIE D. GOLDBERG and GEORGE GOLDBERG, Her Husband. } No. 22295. In Equity.

The President of the United States to Minnie D. Goldberg and George Goldberg, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal noted in the supreme court of the District

of Columbia on the 16th day of December, 1901, wherein Mary Shappirio and Jacob I. Shappirio are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 18th day of December, in the year of our Lord one thousand nine hundred and one.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 18th day of December, 1901.

THOMAS M. FIELDS,
Attorney for Appellee.

480 *Memorandum.*

December 28, 1901.—Appeal bond filed.

481 *Brief of Oral Depositions of Minnie D. and George Goldberg.*

Filed December 30, 1901.

In the Supreme Court of the District of Columbia.

MARY SHAPPIRIO ET AL.
vs.
GEORGE GOLDBERG ET AL. } Equity. No. 22295.

It is hereby stipulated and agreed between the parties that the following brief, prepared by the att'y for the defendants, of the oral depositions of Minnie D. and George Goldberg, shall be used and constituted a part of the record in the appeal in this cause in lieu of the original of said depositions, the right of either party in the argument to refer to said original deposition- for verification of said briefing being reserved. All of the defendants' exhibits were duly offered in evidence, and are to be included in the record herein.

THOMAS M. FIELDS,
Solicitor for Respondents.
LEO SIMMONS,
For Plaintiffs.

December 28, 1901.

482 SEPTEMBER 6, 1901.

Testimony of George Goldberg.

Direct:

Residence, 600 H street northeast; occupation, merchant. I am one of the defendants in this suit; have known Jacob I. Shappirio

since he has been in this city, about 15 years. I do not know his wife except by sight. I have known Richold by sight for a number of years. I have only known him personally since that business transaction here. I never had any business transactions with Richold prior to that involving my Eleventh Street property. Richold came to me and told me that he had a customer for my property (2). He said it was Shappirio. I said I wanted $7,000.00 for it. Richold came afterwards and offered me $6,000.00, which I accepted. I have never been to his office to look for him or to give him the property for sale. He came to my place on Eleventh street and talked to me about it. The only written authority which I gave him to sell was the paper which he made out at my store on Friday, May 11, 1900. I did not tell him when that paper was prepared that the lot was 34 feet front by 80 feet deep. I told him that the lot was 34 feet front and 80 feet deep to an alley, and part of it less, and the balance he would find out on the plat of the District and from the deed which would show the shape and size. Richold said that he would put it down at that and would find out the other when it came to the deed. I said that would be all right (3). I gave Richold the number of the lot and square. For the dimensions of the lot I referred him to the plat and deed. I said the deed will show exactly the shape and size of the lot. I said it was 34 feet front. Richold asked me the depth and I said that part of it runs back 80 feet, but I am not sure of it and you better
483 look into the deed and plat, and they will tell you all about it. He did not say anything in reply, except that it was all right, and that he would put it down 80 feet and would look up the deed and plat; that is exactly what he said. Richold wrote the body of the paper of May 11, 1900 (4). He asked me for a piece of common paper, and he put it down. I did not read it over after he put it down. He wrote it on the counter in my store. Richold and Shappirio were there and looked at the property one time on a Sunday. I told Shappirio to go and look at the house; that he knew the house, as he had been there before, and he went through the house, and he and Richold came down and went away. I did not go with them, nor did I see anybody with them. I was standing down in the store by the counter. I do not know whether they went through the back portion of the property (5). Shappirio was familiar with the house, as he lived in it, and I did not think it was necessary for me to take him around. On that Sunday I was not in the yard with Shappirio and Richold. I did not go out of the store during any part of the time they were there on that Sunday. They were there for a little while and came on back and went away. I made no statement whatever on that Sunday to Richold or Shappirio in regard to whether or not the stable in the rear of 1247 belonged to that property or to me. That question was not raised, and I did not tell them anything about it. They simply came to me to see the house, and I told them to go and look through (6). I thought they came to see the condition of the house. There was nothing said about the stable. I did not point out the stable as belonging

to the property. I was not out of the store. There was nothing whatever said about the stable or anything else, but they
484 simply came to look at the house—what condition it was in. I did not tell Richold that the whole 34 feet front ran back about 80 feet to an alley. I referred him to the plat and deed, and told him that he would find out all about it from them. He said that he would put it down 80 feet. I did not care, as I thought the deed and plat would correct that. I got a check from the title Co. for the money for the property when the sale was closed in the office of the title Co. (7). I had nothing to do with the examination of the title to the property or the plat or the preparation of the deed from me to Shappirio. I never saw the deed until I signed it. I did not pay for the examination of the title or plat or the preparation of the deed. I signed the deed in the office of the title Co. Before the sale was closed I did not know anything about Shappirio having made a deposit of $100.00 with Richold on account of the purchase of this property. I found out about it when the sale was closed. I do not know whether or not Richold gave Shappirio a receipt for the $100.00. After the sale Richold collected the rent from me. He at once became the agent and made the receipts for me. Shappirio gave him the property to collect the rents, and he collected them all during my tenancy (8).

Richold collected rent from me from June, 1900, to May, 1901, eleven months. There was no water-closet in the yard of 1247. The closets of the two houses are upstairs. I made complaint to Richold about a water-closet on the premises adjoining 1247 which stained my hallway. At the time I pointed out this stain to Richold, but made no statement to him whatever as to the ownership of the stable in the rear of 1247 (9). I did not make such a remark at all. Our conversation took place right in the house and we could not see the ground at all. It was obstructed by two rooms.
485 On that occasion neither Richold nor I went back into the yard in the rear of 1247. At that time nothing whatever was said by him or me regarding the ownership of the ground in the rear of 1247. I never stated to Richold that if Shappirio wanted to buy the property in the rear of 1247 he could do so. That conversation never took place between us. I never said anything about it. I never stated to Richold that he could examine the deeds to Shappirio and would find that ground did not belong to Shappirio. I never offered to purchase or stated to Richold that I would purchase the property back from Shappirio (10).

I never told Richold that if Shappirio wanted to sell the property I would buy it back and would not give him what he paid for it. I never had such a conversation in regard to the property with Richold at all. Richold never said to me that he did not suppose that Shappirio was as hard up as that, to sell me the property for less than he, Shappirio, paid for it. I never had any conversation with Richold in regard to buying the property. I purchased this property in 1879 from Ross Perry and others as assignees of Edward Clark. I identify as the original deed of this property to me the paper now shown me (11).

1247 was constructed first in about the year 1884. 1245 was constructed in 1892. At the time 1247 was constructed, the ground in the rear was a big embankment up to the wall. There was no yard at all. The lot of 1245 was used as a side lot to get into it. There was no outlet at all from 1247 because of the big embankment right against the west wall of the back building. This embankment was 20 or 25 feet high. Campbell, who used to keep that lumber yard, cut down this embankment. He used the dirt to fill up a hollow
486 place in his property (12). He cut it down a good while after I built. After it was graded, then Gates, who owned lot 2, fenced it all around with a six-foot fence. I refer to the piece of ground at the back of 1247. That fence was close in to the back building of 1247. The outlet I used was the side lot of 1245. I saw the complainants' witness, Thomas Galloway, in the office of Mr. Simmons. I did not know him at all. That is the only time I ever saw him. The man was a perfect stranger to me. I have no recollection whatever of having seen him at the Eleventh Street property. I never saw him there with Shappirio (12). I never saw him there alone or with any one else. There were some mechanics there fixing the store. I did not pay attention to them. I did not recognize Galloway at all. Shappirio never introduced Galloway to me at the Eleventh Street building. I did not take Shappirio and Galloway out to the back of 1247, nor was I standing in the back door leading to the yard. I never introduced Shappirio and Galloway to Isaac Roginski (14). No such thing occurred at all. I never told Ike to take them through the stables and show them everything that belonged to the property. If I had wanted to show him the yard I could have done so myself. I never did so. I never stood and looked on while Roginski was showing them the property. I know nothing of it. I do not know whether Isaac Roginski ever showed this property to Shappirio and Galloway or not. I never told him to do so. I do not know anything about it. I never saw him do so, and never heard of his having done so (15). I do not know anything about what Galloway and Shappirio have testified that Ike did or said to them. I never told Roginski to make any such statements to them as to which they have testified. I repeat that
487 I know nothing about Isaac Roginski having shown them the yard, the stables, the alley, and a goat. The stable of 1245 was locked with an inside bar (16). It could not be opened from the outside. We always kept it locked. Isaac Roginski never had any instructions from me at all to show Shappirio and Galloway over this property and I do not know anything at all about any such transaction. Shappirio never stated to me that if he wanted to build a stable he could make one out of the two in the rear of 1247 and 1245. I never had any conversation with him in that respect at all. In fact I never had any conversation whatever with Shappirio about the stable or about the erection of a new stable. I knew Shappirio by sight when he worked for Cohen in 1247. He was then a new-comer in Washington. I saw him in

the store there (17). I never told Richold that I had two stables. I never mentioned the stable when he came there with Shappirio on the Sunday. He simply asked me to see the house. I never made any mention at all about the stable in the rear of 1247 belonging to 1247 or to me. It was not mentioned at all. I never had any conversation whatever with Richold or Shappirio, prior to the sale, regarding the ownership of the stable in the rear of 1247. I never claimed the ownership of it to them or either of them, or to any one else, and as a matter of fact I did not own it (18). Isaac Roginski never pointed out that stable in the rear of 1247 as belonging to the property, to my knowledge. I did not point it out to Shappirio and I never told Isaac Roginski to take Shappirio and show him around. Outside of this transaction I never had any other real-estate transaction with Shappirio. I sold him some merchandise one time when I gave up my place of business. Shappirio never told me anything
488 about how or when he first learned that the ground in the rear of 1247 belonged to me at the time of the sale. He never made any statement about it and never came to me to say anything about it. I never knew anything about it (10). I thought he knew at the time that it did not belong to him by the deed and plat. He never made any demand at all for it to me. I never represented to him or Richold that it belonged to me, and I never claimed this piece of property. I never had any conversation with Richold about this piece of ground at all. I never told Richold to tell Shappirio that if he wanted to sell the property I would buy it back at a loss. I never had any conversation with him about it. I know Mr. Guy, of Guy, Curran & Co. I never sent Mr. Guy to Richold to ask him whether he would sell the property (20). I never spoke to Mr. Guy about it at all. I never made an offer to repurchase the property from Shappirio. I vacated about May 6, 1901, or the day before. At the present time there is a passageway from 1247 to the alley. You can go out of the east door of the summer kitchen into that area, and right straight out to the alley. This passageway is about three feet wide. Back there it is wider about eight or ten feet, but it narrows down. The L between the buildings into which the east door of the summer kitchen of 1247 leads is about eight feet wide (21) and about twenty-two feet long. Both of the doors of the summer kitchen open inwardly. The summer kitchen is only a temporary thing that could be moved away. It is constructed of lumber, and is about six by eight in size (22). If it be taken away there is free access from the door in the back building, and you can go all around. There would be no obstruction whatever. The shutters on the windows in the rear of 1247 were never closed and could not be closed on account of the bars (23). At the time of the sale to
489 Shappirio I had a mortgage on the property held by the Equitable Building Association for three thousand and some dollars. (It is conceded that the amount is $3,425.00.) I identify as the original deed of trust which I executed on this property the paper now handed to me. There were two mortgages on it. Another loan was made. While I was a tenant of Shappirio I called on him

personally and asked him to reduce the rent. I saw him at his place of business on Eleventh street. At that time I did not have any talk whatever with him about the stable in the rear of 1247 (24). I wanted him to rent me one house—1247. He told me it would cost me $35.00 for that one alone. I thought it was too much and said nothing more about it. I have not seen Shappirio at all since I moved out, nor *I have* had any communication of any kind with him. Just before I moved out I saw him once in my store, when I sold him the shelving. He was there and looked at the shelving and we bargained about it and he bought and paid for it. That conversation occurred in the store of 1247. Shappirio came there by himself one morning. He bought the shelving, awnings, and fixtures. This was a few days before I moved out (25). He did not say anything to me at all about the stable in the rear of 1247. Nothing was mentioned about it. He paid me for the shelving and awning. There is nothing whatever which prevents the opening of the western door of the summer kitchen. It opens inwardly. They can close that door altogether and make another facing north and go right straight out if they want to. I did not know Darby personally until that business transaction. I went to see him to buy the property for my wife. She sent me there. During my negotiations with Darby I was acting for my wife (26).

490 The negotiations with Darby covered about three days. It did not take very long before the final deal. These negotiations did not cover a period of more than one year, as stated by Darby. I do not know whether he asked me any questions about who wanted it. Fifty cents per foot—three hundred dollars—was paid for the ground. Mr. Barnard examined the title before it was purchased. A certificate of title was made up and a plat was made (27). Mr. Barnard prepared the deed from Darby to my wife. It was executed in Mr. Barnard's office. Neither my wife nor I was present at the time. She was not very well, and, as there was nothing for her to sign, we left the money. Darby was to sign the deed and Mr. Barnard got the signature. It took a couple of days to get Mrs. Darby to the office. She was in Virginia and would not come back, and I left the money with Mr. Barnard, and he got the deed signed and turned it over to my wife. I recognize the paper now handed me as the certificate of title which Mr. Barnard issued. I also recognize the plat (28). I also recognize the paper handed me as the original deed from Darby and his wife to my wife. Mr. Barnard ordered a tax certificate of this ground, which I recognize as the paper now handed me. My wife has paid the taxes on this ground since she owned it; I guess she did (29). I acted as agent for my wife and left the money with Mr. Barnard, and he paid Darby and got the deed. My wife gave me the money which I left with Mr. Barnard for Darby. She had a little money when I married her and I never used it in business, and she gave it as her own private money. I married her in 1896. I had known her for years before. She worked at Lansburgh's for a number of years, and worked for Baum and saved her money (30). It did not cost

her anything, as she *bought it* with her mother and brother and she saved it. I do not know how much money she
491 had when I married her. I never asked her. I knew she had some money saved up. I never knew where she kept it. I never used any part of it for my own purposes. The money which she gave me for Mr. Barnard was in cash. She took it out of her pocket-book. The deposit I made with Darby when the price was agreed upon was twenty dollars (31). I think the price paid—fifty cents per square foot—was reasonable the way property sells around there now. The strip contains six hundred square feet. I made no statement whatever to Darby about my having possession of this strip of ground. Darby would not sell it for any less than three hundred dollars. I never stated to Darby that three hundred dollars was an outrageous price for it (32). I made no statement whatever to Darby as to why my wife desired to purchase this ground. I did not make any specific offer to Darby for the ground. Gates told me that if I would give him thirty dollars I could use that piece of ground and that he would extend the six-foot fence around it and would make a sort of a stable on it which I could use as long as nobody claimed it (33). I agreed to that proposition. Gates extended the fence and put the roof on. He used some old lumber there, and got a carpenter named Selby to fix it. It did not take him very long—two or three days. I do not know what it cost Gates, nor what bargain he made with Selby or what he paid for it. Gates employed and paid Selby. I know I did not pay him. Gates furnished the material (34). Gates sent Selby to get the permit, and he came back and said he could not get it, as they could not understand what he wanted, so Gates told him that he did not feel very well, it was too far a walk, and he was an old man, and asked me to go to the office and get the permit, and so I went there
492 and applied for the permit and got it. I signed a paper for the permit, but did not take any notice of it. They gave me a blank there and told me to sign it and I put my signature on it. I thought it was a matter of form. It was such a lengthy paper I did not have time and I simply signed it. They did not ask me any questions, but told me to sign the paper. I gave the measurements of the place, described it as well as I could, and gave the location of the property. After I got the permit I gave it to the carpenter. It is customary to have it on hand. I do not know what became of it (85). I did not take notice at the time I signed the application for the permit that the word owner was printed on the line on which I signed my name. I had got other permits and they never questioned me about the owner or asked me to put my signature on the application. I had nothing whatever to do except what I have stated. Since I vacated, my wife has kept some valuable stuff, trunks and things like that, in this shed. There are some articles in that shed now. It is pretty full. Such things as trunks, dishware, wholesale stuff, shelving, and things like that, which we could not take away from there, are in it. She had so much stuff that she stowed it in there (36). We have used the shed

for such storage purposes ever since we vacated. Gates used to own the front part of lot 2, in square 977. He owned it at the time of my transaction with him. He always thought he owned the back part, but afterwards found out he did not own it. It was Gates who first put the fence around the back part. He told me that he had not gotten the title to it, but that Clark had the title to it, but, as nobody claimed it, I could use it. He said he had been using it and that I could use it as long as nobody claimed it. The
493 front part of lot 2 is now owned by Lewis Goldberg. We heard that it is expected that that property will soon be sold (37). There was a rumor that the front part of lot 2, which is improved with a house, was going to be sold, and she thought if she could but it reasonable she would do so. She bought this back part in order to get an outlet to the alley from the front part. Her purchase of this particular ground did not in any manner relate to the property 1247 Eleventh street southeast. That property was not in any manner taken into consideration by her in her purchase. She intended to secure to herself an outlet from the front part of lot 2, and that is why she bought that piece of ground. She had made her arrangements to prepare herself to purchase the front part of lot 2 when it was to be sold (38). She was saving up a little money in the Equitable Building Association, and she has a few dollars. She went into that building association, and is still a member of it, and pays money into it monthly. Both Gates and Selby are dead. In the rear of 1245 and 1247, clear over to Tenth street, the ground is vacant and not graded. The alley in the rear of these premises is not laid out or improved. It is not curbed, and has no sewer (39). It is simply like a driveway, that is all you can see. After I moved away my wife ordered the fence put up. I do not know who did the work. (Order for certificate of title of 34 feet front of lot 28, square 977, produced and offered in evidence) (40).

(Continuation of this order for certificate of title) (41).

494 SEPTEMBER 11, 1901.

Testimony of George Goldberg.

Further direct:

I erected 1245 and 1247. Apart from the ground the buildings cost me about $6,000, not less than $6,000. They could not be erected at the present time for any less. Before I talked with Darby about the purchase for my wife of the back part of lot 2, Clark came over to see me about it, but I did not pay any attention to it. Clark is Darby's father-in-law. Clark talked to me several times about it (96). These talks extended over a period of about two years before I talked to Darby. (Mr. Simmons concedes that Shappirio is opening a place himself in 1245 and 1247; that he was unable to rent the property and there was nothing for him to do but to try to put it to some use) (97).

Cross:

Clark told me that piece of property belonged to him and he wanted to sell it to me. 1245 and 1247 originally belonged to Clark. At that time I paid no attention to it. That was after the shed was built. I did not build the shed (98). Gates told me that I could use this piece of ground until somebody claimed it. It was not mine. Clark said he owned it, but I did not investigate whether he was the owner or not. He did not give me any notice to move, but if he had done so I would have moved and left the shed there, as I could not take it away. Clark said he owned the ground, but he did not object to my using it, and so I used it (99). I went to see Mr. Darby only once. I was born in 1847 (100). Richold talked to me about this property about four or five weeks before May 11, 1900. He asked me to sell. He said
495 he had a customer, Shappirio. I told him I would sell it for $7,000 (102). He came back on a Friday and said that Shappirio sent him there to make me an offer of $6,000 for the property. I accepted this offer and then the paper of May 11, 1900, was drawn up and signed. I did not read the paper (103). He read it himself. I then said that only part of the lot runs back 80 feet. He said to never mind, to let it stay 80 feet, and that they would correct that by the deed and plat. I did not read the paper myself, because Richold read it. My wife did not read it over (104). I gave him the number of the lot and square, but when he put the depth at 80 feet I corrected him and said that it did not all run back 80 feet. I referred him to the deed and plat. At that time I could not tell exactly the correct dimensions (105). He wrote it down 34 by 80, and after he read it to me I said it did not all run back 80 feet, and he said to never mind, that they would let it stay at 80 feet, and the deed and plat will show the dimensions. Shappirio came there one Sunday with Richold to look at the property (106). Shappirio used to work in 1247 with Cohen and knew all about this property (107). I told Richold that part of the lot ran back to an alley (108). I paid my debts with the money I got from the sale. The reason I sold the property was because I owed so much debts. I did not give my wife a cent of that money. I gave her money for household and living expenses, but I gave her none of that (109). She had a little money of her own (110). I did not read over the deed to Shappirio before I signed it. When the check handed to me for the purchase-money was cashed, my wife was not with me (–11). After she signed the deed she went home (112). The water-closet in the yard adjoining 1247 could not be seen from the back yard of 1247 (114). I did not tell Richold
496 anything about the stable on either lot—there was no mention about it. Richold and I did not go out in the back yard in order to see this water-closet on the adjoining property. You could not see this water-closet from the back yard. Louis Goldberg owned the front part of lot 2 at the time my wife bought the back part (114). We heard that the front part of lot 2 was going to be sold from people talking. My wife found out who owned this piece

of property. I told her part of it (116). She sent me to Darby to buy it for her and to have the deed made out in her name (117). She bought it with her own money. I purchased my property from Clark's assignees at public auction. I did not then purchase a piece of ground 34 by 80 feet, but just what the deed called for. When I first built 1247 I used the ground where 1245 now stands as a yard. 1245 was begun in 1892 and finished in the first part of 1893. The ground where 1245 now stands was graded when I built 1247 (118). There was a large bank at the rear of 1247, 20 or 25 feet high, and Campbell, the lumber dealer, cut it down and hauled it away. This was some time after 1247 was built. After this bank was removed, Gates fenced that place in with an ordinary six-foot fence. It was all fenced in so we could not go in that back piece of ground at all. I bought enough lumber from Campbell to build the house (111). All of the lumber in the building came from Campbell. I did not have anything to do with the lumber in the stable. I did not send the carpenter to buy it. I did not have anything to do with the buying of that lumber or the building of that stable. I do not know what the stable cost. Gates had the roof put on. I don't know what tinner did that, or his name (120).

497 When this shed was built I was living on D St. between 9th and 10th Sts. N. W. (121). I never saw Galloway until I saw him at Mr. Simmons' office. I did not know that man at all. I never saw him before (122). I used to buy lumber from Campbell off and on for shelving and different things we needed about the house. The money from sales in the store is turned over to me. When my wife receives it she does not keep it, but takes charge of it and turns it over to me when I come (125). I did not tell Shappirio when he called about the property that I did not own this stable or the back yard, because I supposed he had everything from the deed (130). Gates put up the stable and it is standing there yet (131). I paid Gates $30 for his right to this property. He put up this stable. I always thought it belonged to Gates until Darby made a claim. I agreed with Gates to vacate in case somebody claimed the property (132). When I bought my property I did not know that Clark's assignees had title to this little piece of lot 2. I found it out afterwards. I made no complaint about it because I did not buy that part. That was a part of lot 2, and I did not make complaint about property I did not buy. I did not say anything to Shappirio about these stables. The stable of 1247 did not belong to me—I had no title to it. I knew all the time this stable was not included in Shappirio's deed (133). There is nothing but the back kitchens and walls to indicate that the ground in the rear of 1247 is not a part of that property. The wall of 1247—the back wall—is on the line of the lot (134). I knew this rear ground did not belong to 1247. I never claimed to own the stable back of 1247. I paid $30 simply for the privilege of using it as long as nobody claimed it or put me off. I don't know what it cost to build the stable. I have no idea. It was built on a six-foot fence already

498 there. The fence was simply extended a little higher and the roof put on. The same fence is there now (135). I

talked to Clark about this back ground. He asked me to buy it. I never talked about or mentioned it to anybody after I sold to Shappirio. I knew that I had not conveyed it to Shappirio because I knew it did not belong to me. It was not in my deed. I did not go to the record office to look up, nor did I send my attorney to find out whether I had conveyed it to him (136), nor did I tell Mr. Barnard to look that up. My property was treated all the time as a separate piece of property in the line of taxes and in the deed. It was sold to me that way and that is the way I sold it. We stored some things in the little summer kitchen. It was really an obstruction there (137). It is not built of ordinary material used in building a frame house. The roof is just an old piece of tin, which I picked up on the commons and put on (138). The iron bars in the back window of 1247 were put in during some of the tenants' time. I did not have them put in. I have tried those shutters to see if they would close. They would not close because the bars were in the way. They did not close enough to tie them. I tried them before this suit was begun (139). I called on Shappirio and asked him to reduce the rent, and to rent me only one place. I mentioned nothing at all about the stable or yard. I told him I wanted to rent 1247. He asked me $35 a month for it. He wrote me a letter in regard to that. I have known Mr. Darby since that business transaction. I never saw him before that. I found out from the directory where he lived. I was told he owned this piece of property (140). Clark told me so three or four years before it was bought. It is easy to find out at the tax office to whom the
499 property was assessed. My wife told me to see Mr. Darby and buy this property for her at any reasonable price (141). I did not and do not know anything about what the ground adjoining lot 2, on the west, could have been purchased for. I did not ask anybody what this ground was worth before the $300 were paid for it. She authorized me to pay $300 for it; I made the offer, it was accepted, and the deal was closed (142). I saw Darby only once until I made the $20 deposit. He was then in his office on 14th St. I paid the $20 in cash. He gave me a receipt for it, but I do not remember in what name. I threw this receipt away after the deal was closed (143). I told my wife I had seen Darby and made a $20 deposit for her on the ground. It was afterwards I threw away the receipt (144). I saw Darby and we closed the deal. I never made him an offer before, but I talked with Clark before, who wanted me to buy it (145). I never told Clark that I owned it and was going to keep it. I knew all the time, of course, that I did not own it. I did not tell him that I bought it from Gates. I did not order the plat of this property in evidence. I never saw it before (146). I may have seen it in the office here once. I do not know who ordered it. I cannot tell for what purpose it was made. I don't know anything about it. I did not tell Darby for whom I wanted to buy. I went to the lawyer to have him examine the title, and told him to make out the deed to my wife (147). Neither my wife nor I was present when the deed was delivered to Mr. Barnard.

I left the money in cash with Mr. Barnard. My wife was not
500 then feeling well. Then Mrs. Darby was not in the city. We could not close the deal, and I left the money with Mr. Barnard to get the signatures, and all the papers signed and paid for, and to send me the deed. My wife gave me this money in the house (148). I don't remember in what denominations the bills were. She counted out the money to me. The deposit was $20, and she gave me $280. She took the money from her pocket. She has a little money of her own. I guess that she keeps that to pay monthly into the building association (149). She started to pay into the building association about a year or eleven months ago. I know she had money, but I never asked her about it.

Q. You never saw her have a cent? A. No, sir. I never asked her. I never went with her to the building association to put money in. I did not give it to her to put in (150). She had money of her own. I know she pays it in. I don't know how she pays it. I give her money for clothing when necessary. I have seen her at work in Lansburgh's (151). I knew she was working in Lansburgh's because we were neighbors. I believe her money is in the Equitable Building Association on F St. I do not know how much she had. I never saw her book. When I saw Darby I did not tell him I had possession of this property (153). I don't know whether he knew it or not. I never tell people what they don't ask me. I did not tell Darby that I had a shed on it. My wife has no business of her own. I have one child by her about two years old. I paid Darby $300. I suppose he would not sell for less. If so, he would have told me. He said he would take $300 and I took him up. I never told Darby he was charging an outrageous price (154). I generally pay what a man asks if it is within reason. Gates told me — had some old boards which he used in building the fence. $30 is all I paid Gates. I paid him in cash. The stuff in the shed is a part of our property (155). The dishes and things like that I don't consider my property. I understood that my wife purchased this
501 little piece of property because she heard that the front part of lot 2 was going to be sold. That is what I understood from her. That is all she said. She told me to go and buy it (156). There was a rumor there among the neighbors that the front part of the property was going to be sold. My brother owns the front part. I did not talk to him about it or about this back piece. The rumor I heard was that the front part of lot 2 was going to be sold. That is all. I heard it. People came in the store talking about different things. I don't know why such a rumor as that should be out (157). My brother did not tell me it was going to be sold. I was not speaking to him for some time. I had a little business trouble and was not speaking to him; I did not speak to him. I have heard my wife say for what purpose she wanted the front part of lot 2. She had enough money to buy the front part (158). There is a frame house on it. She was paying into the building association. She was to pay so much for it and the balance by the rent. I heard the front part of lot 2 was to be sold, and she

thought of buying that, and therefore bought the back part. I heard that in the store. I know my wife keeps an account in the building association (159). I heard about a year or so ago from some of the neighbors there—I do not know whom—that Selby was dead. I do not know whether he is dead or not. My wife ordered the fence put up. I heard it. She ordered her brother to put it up (16–). I did not see him put it up. She ordered him to put it up in my presence. It was her brother Lewis whom she ordered to put it up. I do not know whether he put it up or not (161). Louis was present at Simmons' office, but I don't know for what purpose (161). I did not know anything about it (162).

Redirect:

Richold did not read to me that part of the paper of May 11, 1900, which recites that I was to pay him a commission of 3 % on the sale. I did not know until the present moment that that paper contained that provision. He only read me that part as to
502 the size of the lot, and when he came to 80 feet deep I stopped him and corrected him, and said that only part of the lot was 80 feet deep, and he said to let it stay, that they would correct that by the deed and plat. That part of this paper referring to the 3% commission, if it was on it, he never read to me (162). At the time I signed that paper I did not know the exact dimensions of my property. Between the time Shappirio lived in 1247 and the time I sold it to him there was not much change in the building except as to the windows and the hallway. At the time of the deed to Shappirio my wife had some of this money which she had saved. The fence between 1247 and the property to the south of it was about six feet high. If you could have seen over the fence you could not have seen the water-closet because of another fence (163). In stating that I never talked to my wife about this strip of ground before the purchase from Darby, I meant that I never talked with her about whether it belonged to me or not (163). Household articles, shelving, counters, etc., were left in the shed when I moved away from the property. They are still there, I guess. I have not been in it for a long time. The back building of 1245 runs further back than the back building of 1247; 1247 runs to the lot or building line. The back building of 1245 runs several feet further back than the back building of 1247. I threw away the Darby receipt after the deal was closed—after we got the deed from Barnard (164). I generally go over paper- that are useless, and that are in the way, so as not to have too many useless papers. The Darby deal had been entirely closed when I threw that receipt away (165).

Recross:

I did not read the paper of May 11, 1900, the other day, but only examined my signature on it (165). I know I got so much money out of the sale. They gave me the balance in a check, and I suppose Richold got his commission—I did not pay it to him (166). I don't remember about Richold's commission of $180 being deducted from amount of sale.

503 SEPTEMBER 16, 1901.

Testimony of Minnie D. Goldberg.

Direct:

I am one of the respondents in this suit. I know Jacob I. Shappirio. Personally I have not known him long, but I knew of him when he lived down on 11th St. That was 10 or 11 years ago. I do not know his wife personally (168). I only became acquainted with her at the title office. They introduced me there. That was when we sold the property in June, 1900. I have known Richold only since this sale. I met him while it was going on. I saw Richold at 1247 before the sale was closed. I saw him on May 11, 1900, when I signed the paper in evidence. I was called in to sign it. I heard the conversation between him and Goldberg regarding the dimensions of the property. The paper gives the dimensions as 34 feet front by 80 feet to an alley. Goldberg called his attention to that. He said that only part of the lot ran back 80 feet. Richold said it was immaterial; that they would find it in the deed (169). Goldberg said that whatever belonged to him they would find in the deed, the width and length and the number of the lot and all. I did not read the paper of May 11, because Richold read it. He did not read anything about 3% commission to himself. Besides myself, Goldberg, and Richold, my brother Ike was present, standing in the archway. He was near enough to hear the paper read—it was just a small distance from the counter to the arch. He heard the conversation between Goldberg and Richold. I am positive that Goldberg told Richold that only part of the lot ran back to an alley. During the reading Goldberg told Richold to stop right there. He said, Let me call your attention to that (170). That is why it made such an impression upon me. Goldberg said to Richold, Before you go any further let me call your attention that only part of the lot runs back 80 feet. That paper was written in the store on a Friday at the time it was signed. Richold wrote it.

504 Goldberg did not read it before he signed it. Neither of us read it, but just signed it. Ike did not read it. The Sunday before the paper was signed I saw Shappirio and Richold in the property (171). I saw them turn down the hall to the steps, and noticed them going into the bath-room. I did not see Goldberg, Richold, and Shappirio that day. That is the only time I saw them—just as they passed down the steps. I did not hear any of the conversation between Goldberg, Richold, and Shappirio. I knew at that time that the ground in the rear of 1247 did not belong to Goldberg, and had known this for about a couple of years. I knew it because Clarke came there and wanted to sell it to Goldberg, and that is the time he first spoke of it (172). Clark was there a couple of years before the visit of Richold and Shappirio. At the time the paper to Richold was signed, nothing was said by Richold or Goldberg about the ownership of the ground in the rear of 1247. Before the sale was closed I did not know that Shappirio had made a deposit of $100 with Richold. Neither Goldberg nor I had any-

thing to do with the examination of the title of 1245 and 1247, or the order of the certificate of title, or the tax certificate, or the preparation of the deed to Mary Shappirio. Goldberg told Richold that he would find it all in the deed—to get the deed and he would find it all in it. We had nothing to do with all that. I signed the deed to Mrs. Shappirio in the title office. Neither Goldberg nor I had anything to do with the preparation of that deed. Neither he nor I read it before we signed it (173). I understood that the negotiations of sale to Shappirio did not include the ground in the rear of 1247—it did not include that at all. I knew that at the time. There was never any closet in the yard of 1247. The closets of the two houses were upstairs in the bath-rooms on the second floor. I never heard any talk between Goldberg and Richold about Goldberg buying the property back from Shappirio. Richold came down to us with a sign that it was for sale. I did not ask him how much
505 he wanted for it. I asked him not to put the sign up, as we had money standing out and people would see the for-sale sign and that might hurt us in collecting. He said that Shappirio would like to speculate and make a thousand dollars in buying the property. After the sale was closed I saw Shappirio at 1247 with two of his children, little boys (174). He told us that he wanted to make that his home and was going to put in musical instruments and fire-arms. That was shortly after he bought it several weeks. I never saw Shappirio there with a man named Thomas F. Galloway. I do not know any such person. I do not know of any such man having called there either with Shappirio, or alone, or with anybody else before the sale was closed. The only man who was there with Shappirio before the sale was Richold. I was there in the property. I was there most of the time. I would go out once in a while. I was downstairs in the store a great deal. If Shappirio had called there with Galloway I would have seen them or heard of their having been there (175). There was one man who went through the trap-door of 1247. He came through 1245 and came through the trap-door from the roof, and I got a glimpse of him, that is all. I do not know who he was. He looked like an ordinary mechanic. I never saw Goldberg nor Ike show Shappirio and any other person through the property. I never saw Shappirio and any stranger in the buildings or the back portion of the ground before the sale was closed. I never heard or knew of Goldberg telling Ike to show Shappirio or anybody else through the property, or the back portion of it. I never knew or heard of Ike having done so. While I lived in 1247 we used this shed in the rear to store different things (176). Since we moved from there the same use has been made of it. I stored there dishes, counters, cases, and things like that. There are articles in the shed now. They have been there ever since we moved. Some of them have been there since before we moved. About 3 or 4 years ago we kept a goat back of the stable.

506 Q. Did you have any goat there at the time of the negotiation of the sale to Shappirio? A. I don't remember. The

building 1245 runs further back than 1247 (177). 1247 runs back almost to the door of the kitchen of 1245. The door and part of the wall of 1245 runs further back than 1247—about 7 or 8 feet. It runs further enough back as to be easily noticeable. We occupied the property eleven months after the sale. Richold collected the rents at the store during that time. During that time I never heard any talk between Richold and Goldberg about the ground in the rear of 1247. I ordered the fence put around this strip of ground. My brother Louis put it there (171). I paid for it. The shutters at the back of 1247 could never be closed. There was an iron grating outside, and they could not be closed with the grating there. The stable of 1245 was locked with a large bar on the inside. That stable door was always kept locked. When Shappirio came there to buy some shelving from Goldberg I saw him; Shappirio. He happened to come down that day on the same car with us. Goldberg talked with him on the way down. I did not hear anything at all said in that conversation about the ground in the rear of 1247. They talked about Shappirio's mother-in-law being sick and undergoing an operation. Shappirio bought the shelving (178) and paid for it. There is an outlet from 1247 to the alley by going over the 1245 strip which is open. That strip is about 4 or 5 feet wide, maybe more than that. It is concreted. That strip is between the two buildings. There is no difficulty in getting out of the east door of the summer kitchen into the L. You can get out very easily. The cellar doors do not interfere to amount to anything with the ingress to or the egress from the east door of the summer kitchen when the cellar doors are closed. We used that east door in going in and out. The summer kitchen was put up temporarily as a storm vestibule to keep the wind from coming in the
507 kitchen. We never used it as a kitchen, but just to keep the wind from coming in. We used to keep the coal scuttle or a little wood in there. Both of the doors of that summer kitchen opened inwardly. There is no door in the west wall of the back building of 1247. There is a door to the north, and that is the only door to the back building. I learned that Darby owned the ground in the rear of 1247 a short time before the same to me; I heard it belonged to Clark, and then when we went to find out from Clark we found it belonged to Darby at the tax office. Darby was Clark's son-in-law. I sent Goldberg to Darby concerning this ground (181). I bought this strip of ground because I heard the front part of lot 2 was going to be sold, and I bought to have an outlet. The east part of lot 2 has no outlet to the alley except over this strip of ground. This is the only outlet. My purchase did not have anything to do with, and I did not at all take into consideration, the premises 1247. I had no other purpose in purchasing this piece of ground except what I have stated. I paid $300 for this strip of ground in the rear of 1247. I gave the money to Goldberg. I first gave him $20 for the deposit, and afterwards gave him $280. I gave it to him in cash. I got that money by working for it (182). I am 30 years old. I married Goldberg September 20, 1896. I was about

14 years old when I first went to work. I first worked at Chas. Baum's as a cash girl, and then I was a clerk behind the counter. When I started to work at Baum's I lived on 13th St. between E and F, with my family. When I left Baum I was getting $5 a week. I worked there about 4 years, and when I stopped I had saved a couple hundred dollars. After I left Baum I was at home for a while (183); about a year. During that time I made fancy work, and so made a little change. I sold the fancy work. I next went to work at Lansburg Bros.' as a clerk. I worked there about 4 years. I started in at $5 and was getting $7 when I left. When I left Lansburg's I had saved about 6 or 7 hundred dollars of my
508 earnings there. During all the time I worked at Baum and Lansburgh's I lived with my family (184). I used very little of my earnings. My brother Louis clothed me and paid the household expenses. I was under no expense at all for my living. I bought little knick-knacks for myself, but for regular clothing Louis would always give that to me. I had about $500 of that money left when I married Goldberg. I have some of it left now, but not much. When I turned my money over to Goldberg to buy this strip of ground (185) I gave him cash money. No part of the money which I paid for this strip of ground was received by me in any way from or through my husband—none of it. No part of his money was put into this strip of ground—none at all. The money which he received from the sale of the 11th St. property he used to pay some debts he owed. He did not give any of that money to me—none at all. No part of that money was invested in or used for the purchase of this strip of ground. I sent Goldberg to buy this ground because I was sick at the time. After I purchased this strip of ground I made arrangements to prepare myself to purchase the front part of lot 2 when sold, by joining the Equitable Building Association on F St. I bought 5 shares of stock (186). I have paid $12.50 a month on the 5 shares every month since I have been in it. I have gotten the money for that purpose from some left that I had before, and I do some fancy-work and always manage to have enough to pay that amount. No part of the money which I have paid into the building association has been received by me, directly or indirectly, from or through my husband. I still belong to the building association and am still paying $12.50 a month to it. I do not consider that Darby charged me too much for this strip of ground when I bought it. I thought it was worth about 50 cents a foot. It is 20 feet
509 by 30 feet and contains 600 square feet of ground (187). $300 is what Darby had asked for it. I do not know anything about Goldberg's business affairs before I married him. There are no buildings or improvements in the rear of 1245 and 1247 as far over as 10th St. Part of it is vacant ground or commons. There are some buildings further up on the street, and on the opposite side of the street—that is, on 10th St.—there are houses. From the sheds in the rear of 1245 and 1247 clear over to the east side of 10th St., the ground is unimproved, vacant, and not even graded. There is no alley laid out or improved back of the sheds in the rear

of 1245 and 1247 (188). There is a side yard to 1245. The stable to 1245 is connected with the brick building. There is no yard between the brick building 1245 and the stable, but only this strip on the side, leading out to the stable and the alley.

Q. At the time of the sale did you keep a bull-dog in the stable of 1247? I don't remember. Just our own family lived in the premises at the time of the sale to Shappirio. Our family then consisted of Mr. Goldberg, mamma, my brother Isaac, myself and the baby (189). My mother is still with me. She is in her 60's and in ill health. The L between the two buildings and the strip leading to the alley are covered with concrete—all of them. During our tenancy *of the premises* Shappirio painted the roof. I do not remember whether or not Thomas F. Galloway made any repairs during that time. (Deed of trust of June 5, 1900, offered in evidence; also the certificate of title issued to the complainants by the Real Estate Title Insurance Co. at the time of the sale in controversy) (190).

510 OCTOBER 3, 1901.

MINNIE D. GOLDBERG.

Cross:

I have lived here nearly all my lifetime. I was born in Russo-Poland—on the border line. I first met Goldberg in America (214). I am about a fourth or fifth cousin of his. I am 30 years old. I was about 2 years old when I came to this country. My father died the same year he came over. The first place I remember living in Washington was on 6th St. (215). I used to see Shappirio on D St. where he has a store (217). Goldberg called me into the store to sign the paper of May 11, 1900. He told me to sign it; that he had sold the two houses. I did not sign immediately. I waited to hear a few words. Goldberg had not signed. He signed first. Goldberg and Richold were both speaking. Richold was just finishing the paper when I came in (222). While Richold was reading the paper Goldberg said, "Stop one moment. I want to call your attention to this, that only part of the lot runs back 80 feet." He did not say what part, but said that only part of the lot runs back 80 feet. Richold said, "It does not make any difference, we will find it all in the deed." I remember that distinctly (223). I remember that is what we were talking about at the time. I know that positively. Richold read over the paper when I came in to sign it. I did not read the paper. Goldberg signed it and then I signed it. I staid there for a few minutes and then went back into the house. Richold did not read anything about 3% commission (224). All he read was about the property itself; and Goldberg called attention to the 80 feet—that only part runs back 80 feet. I first moved to this 11th St. property in Sept., 1896. Goldberg's former wife died in May, and we were married in September (225). I was married at my home. A couple of years after my marriage Goldberg told me that this litte piece of property did
511 not belong to him, but belonged to Clark (226). Goldberg said he was allowed to use it by Gates. While Richold was reading

this paper over my brother was standing in the archway, just a little distance from the counter. He clerked in the store. I know he heard the conversation because he has ears—he has very good hearing—and was standing just a few feet away. There was no one else in the store. From the time I was called in until Richold left it was a very short while. I remember distinctly that the paper was signed on a Friday. I saw Richold writing it. Goldberg did not read it before he signed it. I was standing right there. He did not have it in his hands. The paper was lying on the counter and he signed his name to it (228). Goldberg did not have the paper in his hand and did not read it. Richold read it. Goldberg did not take it into his hand to sign it. It was lying on the counter. Richold read it for us (229). I saw Richold and Shappirio examining the property on the Sunday prior to the signing of this paper (230). I did not see Goldberg with them. Goldberg told me it was Richold (231). I knew at that time that this little strip of ground did not belong to Goldberg (232). Goldberg told me it did not about two years after our marriage. Goldberg told me about his talks with Clark (233). I have had three children. One is living and two are dead. My first child died about three months after she was born. I was then living in this property (234). When the paper was signed Goldberg told Richold that only part of the lot runs back 80 feet. Goldberg stopped Richold right in the middle of the latter's reading and said, "Wait a moment. Let me call your attention that only part of the lot runs back 80 feet." Richold says, "It does not make any difference, we will find it in the deed." I know that the sale to Shappirio did not include this small piece of ground because it never belonged to us. We never owned it. If we do not own a thing, we do not claim to sell it. We did not own it. We only had the privilege of using it (235). I did not own it at the time the property was sold. I saw Richold when
512 he came down with the sign to put on the house, and I saw the sign. When he came in my brother and I were there. Richold said that he wanted to put this sign up on the house. I asked him what for. He said that Shappirio wanted to sell. I said that he had just bought it. I told Richold not to put up the sign, as there were people owing us money, and if the sign was put up they would not pay us (236). This was shortly after Shappirio bought the property. It was a "for sale" sign. The Sunday before the paper was signed I saw Shappirio around the place (237). I saw him there after the sale with his two boys. I heard him say that he was going to make it his home, that he would not sell it, and was going to put in musical instruments and firearms. This was two or three weeks after the sale was closed. Richold brought the sign down afterwards, and said he was going to sell. I saw some workmen painting the roof there, but nobody else (238). I was home most of the time. I saw only Richold and Shappirio there before the sale. There were no others. I would have heard of it if there had been (239). Goldberg tells me most everything—that is pleasant. If there is anything to worry me he keeps it back. I don't know

how often I was in the back yard. Some days I was sick—maybe for months at a time (240). I don't know if we had a dog at this place; we might have and might not. I was sick a great deal at that time, and never bothered about anything but my sickness. When we lived on D St. we had a little dog.

Q. Did you own a dog in 1900? A. I don't remember (241). I remember about the sale because, naturally enough, if your house is going to be sold you think of it. It is more important than a dog. I don't remember how often I was sick during the year 1900. I was sick a good deal of my time down there. I don't know anything about a dog there in May, 1900; I don't remember (242). I had
513 no servant (243). My mother helped me (244). I never saw any one in the back yard of 1247 before the sale was closed. I never saw Richold and Shappirio in the back yard. If they had been there naturally enough I would have seen them. The articles in the shed of 1247 belong both to Mr. Goldberg and me. I had dishes and different things like that before I married Goldberg which I got from my home. My brother gave them to me when he broke up house-keeping. Both my mother and I kept the house. My brother was the head of the house and supported it. There were counters, dishes, and different things in the shed in the rear of 1247 (246). I never had a photograph of the back of 1247. The photograph F looks all blurred. I have never been in that shed since we moved (247). I know what is in it because we put it there. Some little things have been taken out. I sent different ones for them. I have a key, but Goldberg has not. He never bothers about my things. Some of the articles in the shed belong to me and some may belong to him and some to both of us (248). I don't think my brother has a key to the place. I keep the key at home. We had a goat when child was born (249). If you were human you would omit about the child's death. I had the goat long ago—before my first child was born—and have not had a goat since. That has nothing to do with the property. After the child's death we sold the goat. I was sick all the time this was going on (250). My living child is 21 months old. She was born January 1, 1900. I did not have a goat for the purpose of getting milk for that child. This child had no occasion for the milk. We only got the goat for the first child. I do not know to whom the goat was sold or what became of it. I know it was sold, but do not know who received the money for it (251). I was there many times when Richold came to collect the rent for the property after it was sold. I was in the store most of the time. I myself attended to my child during those periods. I did not say my mother-in-law was sick and had to go through an operation; that was Shappirio's
514 mother-in-law. He was in the car. The summer kitchen was just put up to keep the storm and the wind out. I had it put there. I asked Mr. Goldberg to put it up because the wind would blow in the kitchen (252). It was put up the first part of my married life. It is not necessary for the protection of the kitchen. Others lived there before I did, but they never had it there. I

learned at the tax office that this rear ground was assessed to Darby instead of Clark. I went to the tax office once or twice and traced it up (253). I did not take Mr. Clarke's word about the ownership and I found it belonged to Darby at the tax office. Goldberg told me that Clark came to him and wanted to know if he would buy it. I did not talk to Clark about it. I did not think that Darby owned it until I found out to whom it was assessed. I went and hunted it up on the records at the tax office. This was about the time I was trying to buy it. It was not before the sale to Shappirio, but it was long after. I went to the tax office where you pay the tax bills (254). That is over here in the District building. I had paid a tax bill before for Goldberg. I used to pay all the tax bills, water rents, and all. He gave me the money to pay them. He never gave me a check in his life. I went to the tax office to find out who owned this piece of property and found that it was assessed to Darby (255). That was about the time I bought it from Darby. I never saw or talked with Darby about it. The next step I took was to go home. When I found out that Darby was the owner I sent Goldberg to him to buy it. I asked Goldberg to buy that piece of property for me if it was not too much (256). I did not state any price but said it if was not too high. I had my price and told him about what to pay I told him not to pay over 50 cents a foot. I am not green. I read papers and talk with different people. I knew what property around that neighborhood was selling for. I had an idea. We kept a store and people would come in and talk (257).

515 Some of the people who came in talked about real estate and lots of things (258). I got the dimensions of the property from the surveyor (259). The surveyors came there and measured the property themselves. Refuses to tell whom she se-t to have survey made, other than that she sent a friend (260). I had the surveyors lay it out when I bought it. I found out before how many feet it had (261). It was 20 by 30 and had 600 square feet. I examined at the tax office to ascertain the owner of this property. Then I sent to the surveyor's office to have the survey made. I knew the dimensions—the number of feet. I had it surveyed after I bought it. I knew it was 20 feet one way and 30 the other, which makes it 600 (262). I knew that because I was there in the house. I talked it over with Goldberg and different ones, and I knew what the piece of ground contained. I talked with Goldberg when I was buying it and before. Naturally when I sent him to buy it I told him what I wanted him to buy. I never spoke to him before about buying it. Two years after I was married he told me it did not belong to him. We talked again about it when I asked him to buy it. I knew to whom it belonged when I examined the record. I talked to Goldberg about it when I was buying it (263). Mr. Goldberg did not claim the shed. It was on this piece of ground, and he did not own the ground, so he could not own the stable. I had this property surveyed some time in May, 1901—somewhere along there. The shed was there before my time (264). I had it surveyed so as to know exactly where we would come in

and what belonged to me. That square is No. 977. This piece of ground is part of lot 2. It is at the back of lot 28. Lot 2 faces on N St. and runs north and south. Lot 28 runs east and west. The remaining part of lot 2 is owned by Louis Goldberg (265). I know him, but do not associate with his family, and we have not for some years. I purchased this property because it was an outlet to lot 2. That is the only entrance that lot 2 will have. I wanted an entrance to lot 2 because I was going to buy the front part. I heard it was to be sold. I heard different people in the neighborhood talk of it.

516 They were customers (266). I heard the rumor that it was for sale. They heard it was for sale. Can't give their names. I thought I would buy this ground when I had a chance, as I wanted to buy the front part. I was buying this piece for the outlet. I knew the outlet was for sale and I bought it. I thought I would buy the front part (267). The front part of lot 2 is worth more than the back. There is an ordinary frame house on it renting for about 8 or 10 dollars. I do not know what it is worth; I have not fixed a particular price on it (268). I have money. I had $500 when I bought this piece of property. I belong to the building association. I entered it November 13, 1900. I have my book with me (269). I went into it after I bought this piece of property. I have 5 shares and have paid $12.50 a month since then. Goldberg had a building-association mortgage on the houses he sold, this same building association. He has no stock in it now. He quit that with the selling of the houses. I pay $12.50 a month in this association (270). I pay from my own means. I had no other purpose in buying this property except as an outlet to lot 2. That is all I wanted it for. I gave Goldberg $20 for the deposit when I first wanted to buy it—that is, when I sent him. I gave him the money to buy this piece of property. I did not talk about buying this property before. About two years after our marriage Goldberg told me that it did not belong to him (271). I told him that I was going to buy it just about the time I gave him the $20 to go and make the deposit. I next gave him $280 in cash (272). I took my money to buy this property—that is, part of it. When Goldberg came back, after making the deposit, he told me that he had to pay $300 for the property. I do not remember any receipt. His word was all I wanted. I went to work for Baum when I was about 14 years old. For a short time I was a cash girl (274). I received $2 a week for a very short while—about a month or so. I was raised from $2. Afterwards I became a clerk and got $3, and was raised to $4, and then to $5. Baum raised me right straight along (275).

517 Q. "How often did he raise you? You say you were a cash girl two or three months at $2 a week and then were raised to a clerk. What did he pay you then? A. I told you he paid me $3, $4, and $5. He raised me right along.

Q. Answer my question and don't shoot them together that way. A. I am not shooting them together. I am answering every question" (276).

Q. "I will keep you here until tomorrow morning unless you answer my question." A. "I am answering them."

Q. "And I won't close it tonight unless you do answer them" (277). —. I worked for Baum about 4 or 5 years. I received my first raise a few weeks or more after I was there. I got $2 a week when I began and was getting $5 when I left. When I left Baum we lived at 908 D St. (278). I was home about a year and then went to work at Lansburgh's. I first received $5 there, but was shortly raised (279). I was raised after several months—less than six months. Then I got $6 (280). Then I was raised to $7. I left there some time in March, I think. It was at the death of a nephew of mine that I left the store. It was 2 or 3 years before I married Goldberg—somewhere along there. I am not sure. I never kept an account of it. I worked there as a clerk in charge of the toilet department (281). I had different girls under me. I remember a Miss Minnie and a Miss Laura. When I left Baum's I had about $200 or $300 saved from my earnings. I bought very little clothing. My brother supplied me with all my clothing, even with spending money (282). My elder brother is named Ike. He was not here at the time I worked at Baum's, but I think towards the last he returned. He lived with us when he came back. He clerked for different people (283). He worked for his uncle and Shappirio. Mamma, my sister, and a girl
518 did the housework while I was at Baum's. The living expenses all came from the firm of Roginski & Lewis, who were in the sign-painting and glazing business (284). When I was not working I helped to keep house. I left Lansburg's about 3 years before I was married; I am not sure. When I was not employed I made fancy-work—real lace and crocheting—which I sold to different persons, to Mrs. Smith and Mrs. Pyles (285); received four or five dollars from Mrs. Smith for a skirt. I would do most of the fancy-work in the evening. Sometimes a piece of work would take several days if I sat down steadily, but giving it time, at different times, it would take 2 or 3 weeks. When I left Lansburg's I had 6 or 7 hundred dollars. I then still lived at 908 D St. I kept my money at home. I am not afraid to leave money around the house (286). When I married Goldberg I had about $500. I spent none of it for my wedding outfit. My brother supplied that (287). I was married at home; you asked me that once before. I guess I now have several hundred dollars of my earnings (288). By several hundred dollars I mean 1 or 2 hundred dollars. I have between 1 and 2 hundred dollars, if you want to know very particularly. I took it out yesterday when I paid my building-association dues. Store customers pay me when they buy from me. I attend to some of them. I put the money in the drawer where it belongs. That money goes to pay store bills. My husband does not keep it in the drawer all the time (289). He uses it to pay bills and for anything needed in the house. Some of it he puts in the Traders' national bank. When I married Goldberg he had no family. The members of the family now are mamma, Goldberg, a brother of mine, myself, and the baby. My brother is clerking. My mother does some of the housework—not all (290). A few days before we

moved out I told my brother to build the fence, which he did after we were gone. I had him do it to save expenses (292). We never got a notice for non-payment of rent on 1st St. or D St. I never heard of any trouble about the rent not
519 being paid on 1st St. My brother Louis is now in the theatrical business, but does some sign-painting while he is on the road for the person for whom he is working (293). I knew at the time that this property was being sold to Mrs. Shappirio that my husband was selling it. I also knew that this yard did not belong to him. All the negotiations were with Jacob I. Shappirio. I went to the title Co. to close out the sale. I there signed the blue piece of paper Mr. Shappirio had in his hand at the time. I suppose that was the deed (294). After I had signed it I did not do anything with it nor did I give it to any one, but a gentleman there took possession of it after I had signed it. He showed me where to sign. I acknowledged it. I then stayed there a little while waiting for Mr. Goldberg. A gentleman there wrote out a check and handed it to Mr. Goldberg, who put it in his pocket. I do not know what he did with it afterwards (295). I did not see him get the money on that, I am positive. I went over with him to 9th and the Ave., and there left him and went home. I never saw him any more until he got home. I did not, I am positive, go with Mr. Goldberg to the Bank of Washington to collect the money on this check. Mr. Goldberg gives me money for the house. I go and take it, but always say I am going to get it—that I want to get this or that (296). The book produced by me is the only account I have in any building association (297). (Extracts from building-association book) (298). (Shows payments monthly, beginning November 13th, 1900, up to October 2nd, 1901, of $12.50 each.)

(No redirect.)

520 *Instructions for Preparation of Transcript.*

Filed December 30, 1901.

In the Supreme Court of the District of Columbia.

MARY SHAPPIRIO ET AL., Appellants,
vs.
GEORGE GOLDBERG ET AL., Appellees.
} Equity. No. 22295.

The clerk in preparing the record for the appeal in this case will please include the following papers:

Bill of complaint.

Exhibit B, filed with bill.

Answer of defendants and plat attached.

Stipulation of counsel, filed December 9th, 1901; and except—

All depositions on behalf of complainants, with documentary evidence offered therewith.

All depositions on behalf of defendants (save and excepting, how-

ever, the "oral" depositions of George Goldberg and Minnie D. Goldberg).

All documentary evidence offered by the defendants.

The decree dismissing bill.

Appeal and allowances thereof fixing bond.

Citation and acceptance of service.

Approval and filing of bond.

521 Stipulation and briefing of oral depositions of George and Minnie D. Goldberg, which is to take place of the original depositions of said parties. The photograph exhibits will be used as original documents under the rules of practice.

LEO SIMMONS,
For Appellants.

522 UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 521, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 22295, equity, wherein Mary Shappirio *et al.* are complainants and Minnie D. Goldberg *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 28th day of January, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

523 In the Court of Appeals of the District of Columbia.

MARY SHAPPIRIO ET AL., Appellants,
vs.
GEORGE GOLDBERG ET AL., Appellees. } No. 1177.

In printing the record the clerk will please omit the following designated parts thereof, the same being deemed unnecessary for a proper hearing and decision on the merits of the case:

All page 24; all of 25, excepting line 17; all of pg. 26 down to line 21; pg. 33, lines 21 to 27; pg. 45, 16 to 26; pg. 46, lines 2 to 5 and 9 to 13; pg. 49, line 27; all of 50; pg. 51, lines 1, 5, 6 to 8; pg. 56, lines 11 to 20; pg. 57, lines 4 to 8; pg. 60, the last 6 lines; pg. 61, lines 1, 5 to 6; pg. 69, the last 8 lines; pg. 70, lines 2 to 5 and word "upon" in 6th; also lines 8 to 13; pg. 81, last 3 lines; pgs. 82 to 85, all; pg. 86, lines 1 to 18; pg. 88, last 10 lines; pgs. 89 to 91, all; pg. 92, lines 1 to 21; pg. 107, lines 6 to 9; pg. 108, last 7 lines; pgs. 109 and 110, all; pg. 131, all; pg. 227, all; pg. 228, lines 1 to 8;

pg. 248, lines 2 to 5; pg. 296, last 4 lines; pg. 297 and 298, all; plat on pg. 127, and plat on pg. 129; pg. 359½, all; pgs. 362 to 364, all; pg. 368, all excepting 1st 2 lines; pg. 369, all; pg. 371, last 11 lines; pg. 372, all, and pg. 378, first 17 lines.

LEO SIMMONS,
Att'y for Appellants.

[Endorsed:] No. 1177. Court of Appeals, D. C., January term, 1902. Mary Shappirio *et al.*, appellants, *vs.* Minnie D. Goldberg *et al.* Appellants' designation of parts of record to be omitted in printing. Court of Appeals, District of Columbia. Filed Feb. 8, 1902. Robert Willett, clerk.

524 In the Court of Appeals of the District of Columbia, January Term, 1902.

MARY SHAPPIRIO ET AL., Appellants,
vs.
MINNIE D. GOLDBERG ET AL., Appellees. } No. 1177.

The appellees hereby designate to be printed the following parts of the transcript of record which the appellants have designated to be omitted in printing:

All of pages 359½, 362 to 364, 368, 369, 371, 372.

THOMAS M. FIELDS,
Solicitor for Appellees.

February 8, 1902.

(Endorsed:) No. 1177. Court of Appeals, D. C., January term, 1902. Mary Shappirio *et al.*, appellants, *vs.* Minnie D. Goldberg *et al.* Appellees' designation of parts of record to be printed. Court of Appeals, District of Columbia. Filed Feb. 8, 1902. Robert Willett, clerk.

Endorsed on cover: District of Columbia supreme court. No. 1177. Mary Shappirio *et al.*, appellants, *vs.* Minnie D. Goldberg *et al.* Court of Appeals, District of Columbia. Filed Feb. 3, 1902. Robert Willett, clerk.

TUESDAY, *April 15th, A. D.* 1902.

MARY SHAPPIRIO and JACOB I. SHAPPIRIO, Appellants,
vs.
MINNIE D. GOLDBERG and GEORGE GOLDBERG. } No. 1177.

The argument in the above entitled cause was commenced by Mr. Leo Simmons attorney for the appellants, and was continued by Mr. Thomas M. Fields attorney for the appellees, and was concluded by Mr. Leo Simmons attorney for the appellants.

MARY SHAPPIRIO and JACOB I. SHAPPIRIO, Appellants,
vs.
MINNIE D. GOLDBERG and GEORGE GOLDBERG. } No. 1177.

Opinion.

Mr. Chief Justice ALVEY delivered the opinion of the court:

On the 11th day of May, 1900, George Goldberg and Minnie D. Goldberg, his wife, by written power authorized L. Richold, a real estate broker, in the city of Washington, to sell his or their property, described in the written power, as Nos. 1245 and 1247, being part of lot No. 28, in square 977, fronting 34 feet on Eleventh street, southeast, by 80 feet deep to an alley, with the improvements thereon. Under this power, Richold, the broker, effected a sale of the property to one Jacob I. Shappirio, apparently on the same day that he received the power to make the sale; the price agreed to be paid being $6,000. In the contract of purchase and sale, the receipt of deposit to bind the contract is recited; and the property is described as it is in the power of sale; and in the contract it is stated that the property was improved by two two-story brick buildings, and nothing said about any other buildings or improvements. The terms of sale are stated to be, all cash; and that the property was sold as a good title, or the money to be refunded and the sale to be declared off. It was also declared as part of the terms, that the seller and his agent assumed no responsibility for cost of abstract, nor for any damage by reason of said title proving defective. That the purchaser was required and agreed to make full settlement according to terms of sale, within thirty days from the date of the contract, or the deposit to be forfeited. All taxes were required to be paid to date of deed; and the vendor to give the usual special warranty deed; and the conveyancing to be at the cost of the purchaser. This contract of sale and purchase was signed by Richold, the broker, by Goldberg the seller, and by Jacob I. Shappirio, the purchaser. The latter authorized and requested Richold, the agent, to order and direct the preparation of the deed, and to attend to the whole business of having the property conveyed as required by the contract. This was accordingly done under the direction and supervision of

Richold, the real estate broker, after having the title examined and approved by a title company. The deed was made June 5, 1900, and it was made not to Jacob I. Shappirio, named in the contract of purchase, but to Mary Shappirio, his wife; and that deed professed to convey to the grantee therein, her heirs and assigns, the land and premises, with the improvements, easements and appurtenances thereunto belonging, described as all that part of original lot No. 28, in square No. 977, contained within the following metes and bounds, namely:

"Beginning for the same at the southeast corner of said lot and running thence north on Eleventh street thirty-four (34) feet; thence west eighty (80) feet, eight (8) inches to an alley; thence south on said alley fourteen (14) feet; thence east eighteen (18) feet; thence south twenty (20) feet, and thence east sixty-two (32) feet, eight (8) inches, to the place of beginning."

This description of the premises conveyed is in exact conformity, as to front and depth of lot, to the description of the property authorized to be sold, and which was contained in the contract of sale and purchase, signed by all the parties concerned. It appears that, at the time of the sale and conveyance of this lot, No. 28, on Eleventh street, there was at the end of that lot a piece of ground, twenty by thirty feet, part of another lot, upon which there was a shed or stable, and which had been used by the owner of lot 28 on Eleventh street, but which piece of ground so located did not belong to the owner of lot 28. After the deed to the plaintiff Mary Shappirio of June 5, 1900, Minnie D. Goldberg, the wife of George Goldberg, purchased, for the sum of $250, this small piece of ground, and had it conveyed to her by deed dated 28th of September, 1900.

Sometime after the deed to Mary Shappirio, of the 5th of June, 1900, she executed a deed of trust of the property conveyed, to secure the sum of $4,500, to two trustees, Smith and Norment, but who are not parties to the present bill, though the money has not been paid, according to the admission of the parties to this suit. Upon accepting the deed for the property, the grantee, together with her husband, entered into the control and possession of the property, and rented the same to Goldberg, the vendor, for nearly a year, and received the monthly rent therefor, and only refused to continue to rent the same to Goldberg because the latter refused to pay the amount of rent asked. Sometime after Goldberg vacated the premises as tenant, the present bill was filed on May 10, 1901, by Mary Shappirio, and Jacob I. Shappirio, her husband, against Minnie D. Goldberg and George Goldberg, charging fraud and deception by George Goldberg, in respect to the extent of the property sold by him, and as to the ownership of the small piece of ground in the rear of lot 28, and upon which the shed or stable had been erected, as before stated.

It is charged in the bill, that the plaintiff, Mary Shappirio, through her husband, agreed to purchase of the defendant George Goldberg premises known as Nos. 1245 and 1247 Eleventh street, southeast, in the city of Washington; that said premises are located

on part of lot No. 28, and part of lot No. 2, in square 977 of said city, and which parts of lots are described as follows:

"Beginning for the same at the southeast corner of said lot 28, and running thence north on said Eleventh street 34 feet, then west 80 feet and 8 inches to an alley, thence south on said alley, 14 feet; thence west with the line of said alley, 12 feet, thence south 20 feet, thence east 92 feet and 8 inches, to the place of beginning; which parts and parcels of real estate are improved with two certain stores and dwellings, together with two stables or barns fronting on the alley on the rear of said land."

It is then alleged that at the time of the sale the said Goldberg was using and occupying both of the stores and all the appurtenances to the buildings, and the yards at the rear were all inclosed as one parcel, with no dividing fence between them: that Jacob I. Shappirio, acting as agent of his wife Mary, was told by the vendor Goldberg that the entire yard inclosed and the barns then in his use and possession, were part and parcel of said premises, and that the sale and purchase included all the land in the bill described; and that the same had been used by him for many years as part of the premises sold; and that the plaintiff Mary agreed to purchase the property as the same was pointed out and described to her husband by Goldberg for the price mentioned. That the plaintiffs having full faith in Goldberg, and in the truth of his representations, the entire transaction in relation to transferring the property was left to Richold, the agent of Goldberg. That notwithstanding the fact that Goldberg had agreed to sell said pieces or parcels of ground and premises, he only conveyed to the plaintiff Mary that part of said described land which comes within the lines of lot 28; that the deed was not examined by plaintiffs before paying for the property; and that said Goldberg, knowing that he did not own the legal title to said part of lot 2, while occupying the premises as tenant of the plaintiff Mary, with the intention of cheating and defrauding her, did, on the 28th day of September, 1900, apply to and purchase from the owner of the legal title of said part of lot 2, and caused the title thereto to be conveyed to his wife Minnie D. Goldberg; that he paid for the same with money of his own, and caused the title to be conveyed to his wife as part of the scheme to defraud the plaintiff, and that Minnie Goldberg, the wife, was party to the fraud, and had really no interest in the property otherwise than to hold it for her husband, and thus to aid him in perpetrating the fraud upon the plaintiff.

Upon these and other allegations, all made in support of the charge of fraud and deception, the plaintiffs pray—1st. That it be declared and decreed by the court that Minnie D. Goldberg hold said piece or parcel of ground located within the lines of said lot 2, for the use of plaintiff Mary Shappirio, and that she be required to convey the same to her free and clear of all incumbrances placed thereon; 2nd. That if such relief be not allowable, that the sale to the plaintiff Mary be rescinded, and that George Goldberg be required to refund to her the full amount of purchase money paid for

said property, together with all costs and charges that she may have incurred by reason of such sale, with interest thereon; and in default of so refunding the purchase money, that the property be sold under the decree of the court; and for other relief.

The defendants answered the bill, and denied all the material allegations therein, and especially all fraudulent and deceptive facts charged against them; and aver that the plaintiffs were in no way deceived or misled by the defendants or either of them; and that if they, the plaintiffs, were in any *respect misled or deceived* in regard to the property purchased, or the extent thereof, it was the result of their own want of care and attention to what they were buying.

There was a large mass of testimony taken, much of which was conflicting, and the greater part without relevancy to the real questions involved. The court below decreed against the plaintiffs and dismissed the bill.

It is conceded that the small parcel of ground forming part of lot No. 2, in the rear of lot 28, both lots being in square 977, did not in fact belong to Goldberg at the time of the sale to the plaintiff, and he, therefore, had no right to sell and dispose of it to the plaintiffs. But we, nevertheless, think it probable that the plaintiffs, or rather Jacob I. Shappirio, was really deceived and misled by appearances, as to what in fact did constitute lot 28 purchased of Goldberg. Though Goldberg may not have made any positive representations as to the extent of lot 28, it does not appear that he was required so to do by any request of Shappirio; and the latter was left free to his own investigation of the subject. The apparent relation of the yard and shed, in the rear of lot 28, to the front lot was such as was well calculated to produce the impression, from a mere inspection, that they constituted part and parcel of one entire premises. But the purchaser was bound, for his own protection, to ascertain to what the description in the contract of purchase and in the deed of conveyance did in fact apply, and what was embraced therein. That description speaks for itself, and shows plainly that it does not embrace the small parcel of ground at the rear of lot 28, and forming part of lot No. 2.

In the examination of L. Richold, a witness produced for the plaintiffs, and who was the broker that made the sale, and who had the title examined and the deed prepared for the purchaser, in giving an account of an inspection of the property, prior to the sale, in company with Goldberg and Shappirio, in answer to the question,—"Did Mr. Goldberg state to you at any time, whether or not the stable at the rear in the yard of 1247, belonged to this property? A. He did not. I only asked him what was the size of the lot, and the front and in the rear, with the improvements thereon.

"Quest. Did he say it did not belong to it? A. No; he never mentioned that, either. I never gave it any idea or the least consideration. When you tell me you have so much depth to the alley, I thought he sold the whole business, and that was my idea. I thought it was all in there what was there.

"Quest. State who paid the money for the property to you, if anybody. A. Mr. Shappirio paid the money. I fixed it up in Mr. Ash-

ford's office. Mr. Shappirio paid me $100 deposit before the deed was made.

"Quest. Now, after the money was paid, what was done about the examining of the title? What part did you take in that? A. Mr. Shappirio authorized me to order the deed, and attend to the whole business, and I did so, with no understanding that there was any trick behind it." And then, in answer to the question, "When did you first learn, if at all, that the property upon which the stable of 1247 stood, and the back yard to that house, was not included in the deed? A. About five or six months after the sale. I went there to collect the rent from Mr. Goldberg. He was complaining about the water-closet, and he told me to attend to it. It looked to me that it was only an excuse to call my attention to the yard."

Whatever may have been the impression on the mind of the purchaser in this case, as to what was embraced in lot 28, or the part thereof described in the deed of conveyance, as indicated by external appearances, the principle is established beyond question, that the reformation of a contract of purchase will not be decreed on the ground of mistake unless there be clear and unmistakable proof of *mutual mistake*, or mistake of one party induced by the *fraud, deception*, or *wrong* of the other party. And to vitiate a contract, and especially an executed contract, upon the ground of misrepresentation and deception, the misrepresentation must relate to a material fact, constituting an inducement to the contract, of which the complaining party *had no means of knowledge*, and upon which he relied, and by which he was actually misled to his injury. As said by the Supreme Court of the United States—"A court of equity will not undertake, any more than a court of law, to relieve a party from the consequences of his own inattention and carelessness. Where the means of knowledge are at hand and equally available to both parties, and the subject of purchase is alike open to their inspection, if the purchaser does not avail himself of these means and opportunities, he will not be heard to say that he has been deceived by the vendor's misrepresentations." *Slaughter v. Geirson*, 13 Wall. 379, 383.

In the case of an executed contract, where the deed has been made and accepted, and the grantee has treated and dealt with the property as his own, as in the present instance, the ground for seeking a rescission of the conveyance, or a material change therein, must be shown to be of the most imperative character, and such as the ends of justice actually demand, in order to justify a court of equity in interposing to grant relief. In such case, as has been repeatedly declared, the power of a court of equity ought not to be exercised, unless the fraud and false representations set up as the ground for relief be established beyond reasonable doubt, and the complainant has been thereby deceived and injured under circumstances which he could not by cautious diligence have controlled. *Atlantic Delaine Co. v. James*, 94 U. S. 207.

In the present case the plaintiffs not only had the deed before them in which the property conveyed was accurately described, but

for several months after the conveyance, and even after knowledge that the small piece of ground, part of lot No. 2, was not embraced therein, they rented the premises conveyed and received the rents therefor, and in all respects treated the property as their own. This of itself concludes them, in the view of a court of equity, which does not tolerate delay in a case of this character. "Where a party desires to rescind upon the ground of mistake or fraud, he must, upon the discovery of the facts, at once announce his purpose and adhere to it. If he be silent, and continue to treat the property as his own, he will be held to have waived the objection, and will be conclusively bound by the contract, as if the mistake or fraud had not occurred." *Grymes v. Sanders*, 93 U. S. 55, 62; *McClean v. Clapp*, 141 U. S. 429, 432.

The principles that govern in this class of cases are very clearly stated by the Supreme Court in the case of *Southern Development Co. v. Silva*, 125 U. S. 247, 250. It is there said that in order to rescind a contract for the purchase of real estate, on the ground of fraudulent representations by the seller, it must be established by clear and decisive proof that the alleged representations were made in regard to a material fact; that they were false; that the maker of the representations knew that they were not true; that he made them in order to have them acted on by the other party; and that they were so acted upon by the other party to his damage, and in ignorance of their falsity, and with a reasonable belief that they were true. But when the purchaser of property undertakes to make investigations of his own respecting the property before concluding the contract of purchase, and the vendor does nothing to prevent his investigation from being as full as he may think proper to make it, the purchaser can not afterwards allege that the vendor made representations respecting the subject investigated which were false. And to this may be added, that if the party complaining seeks to have the contract rescinded, or changed in a material particular, upon the ground of mistake or fraud, he *must*, upon the discovery of the facts, at once announce his purpose and adhere to it, otherwise he will be held to have waived the objection, and be bound as if no mistake or fraud had occurred.

These well settled principles would seem to be decisive of this case. The plaintiffs have failed to bring their case within the principles that would justify the court in granting them relief, in either form in which they pray for it in their bill. We think there was no error in the decree of the court below, and we must therefore affirm it; *and it is so ordered.*

Decree affirmed.

WEDNESDAY, *June 4th, A. D.* 1902.

MARY SHAPPIRIO and JACOB I. Shappirio, Appellants, vs. MINNIE D. GOLDBERG and GEORGE Goldberg. } No. 1177. April Term, 1902.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said supreme court, in this cause be, and the same is hereby, affirmed with costs.

Per MR. CHIEF JUSTICE ALVEY.

June 4, 1902.

In the Court of Appeals of the District of Columbia.

MARY SHAPPIRIO and JACOB I. SHAPPIRIO vs. GEORGE GOLDBERG and MINNIE D. GOLDBERG. } No. 1177.

Now comes the appellants Mary Shappirio and Jacob I. Shappirio and prays the court for an allowance of an appeal to the Supreme Court of the United States, from the decree of this court; that the bond for costs in said case, may be fixed.

LEO SIMMONS,
For Appellants.

(Endorsed:) No. 1177. Mary Shappirio and Jacob I. Shappirio, appellants, *vs.* Minnie D. Goldberg & George Goldberg. Petition for allowance of appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Jun- 9, 1902. Robert Willett, clerk.

In the Court of Appeals of the District of Columbia.

MARY SHAPPIRIO and JACOB I. SHAPPIRIO, Appellants, vs. GEORGE GOLDBERG and MINNIE D. GOLDBERG, Appellees. } No. 1177.

The appellants, Mary Shappirio and Jacob I. Shappirio having prayed an appeal to the Supreme Court of the United States, from the decree of this court, it is this 9th day of June 1902 ordered that said appeal be and is hereby allowed and the bond, to act as a supersedeas, is fixed at $500.

M. F. MORRIS,
Associate Justice.

(Endorsed:) No. 1177. Mary Shappirio and Jacob I. Shappirio, appellants, *vs.* Minnie D. Goldberg & George Goldberg. Order allowing appeal to Supreme Court U. S. & fixing amount of bond. Court of Appeals, District of Columbia. Filed Jun- 9, 1902. Robert Willett, clerk.

(*Bond on Appeal.*)

O. K. T. M. F.

Know all men by these presents, that we, Mary Shappirio and Jacob I. Shappirio, as principals, and Victor Anderson, as surety, are held and firmly bound unto George Goldberg and Minnie D. Goldberg in the full and just sum of five hundred dollars to be paid to the said George Goldberg and Minnie D. Goldberg their certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of June, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said court, between said Mary Shappirio and Jacob I. Shappirio against said George Goldberg and Minnie D. Goldberg a decree was rendered against the said Mary Shappirio and Jacob I. Shappirio and the said Mary Shappirio and Jacob I. Shappirio having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said George Goldberg and Minnie D. Goldberg citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, that if the said Mary Shappirio and Jacob I. Shappirio shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

MARY SHAPPIRIO. [SEAL.]
JACOB I. SHAPPIRIO. [SEAL.]
VICTOR ANDERSON. [SEAL.]

Sealed and delivered in presence of—
LEO SIMMONS.

Approved by—
M. F. MORRIS,
Associate Justice Court of Appeals
of the District of Columbia.

[Endorsed:] No. 1177. Mary Shappirio and Jacob I. Shappirio, appellants, *vs.* Minnie D. Goldberg and George Goldberg. Bond on appeal to Supreme Court U. S. Court of Appeals District of Columbia Filed June 19, 1902. Robert Willett clerk.

UNITED STATES OF AMERICA, *ss:*

To Minnie D. Goldberg and George Goldberg, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Mary Shappirio and Jacob I. Shappirio are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the appellants, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable M. F. Morris, associate justice of the Court of Appeals of the District of Columbia, this 19th day of June, in the year of our Lord one thousand nine hundred and two.

M. F. MORRIS,
Associate Justice of the Court of Appeals of the District of Columbia.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jun-20 1902 Robert Willett clerk.

On this 20th day of June, in the year of our Lord 1902, I hereby accept service of the within citation.

THOMAS M. FIELDS,
Solicitor for Appellees.

Court of Appeals of the District of Columbia.

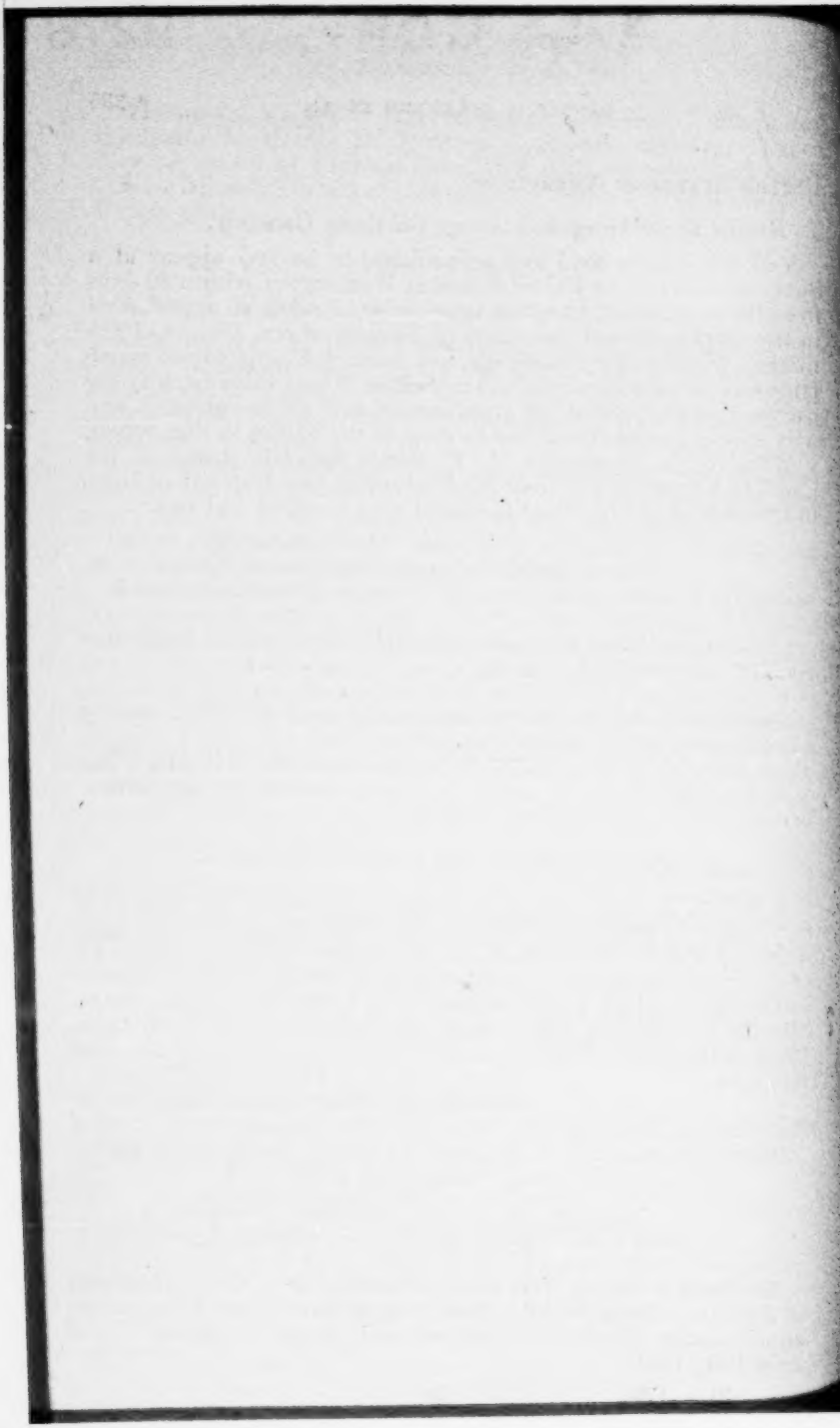
I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 234 inclusive contain a true copy of the transcript of record and proceedings in said Court of Appeals in the case of Mary Shappirio and Jacob I. Shappirio appellants *vs.* Minnie D. Goldberg and George Goldberg No. 1177, April term, 1902, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 8th day of July A. D. 1902.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 18,607. District of Columbia Court of Appeals. Term No. 87. Mary Shappirio and Jacob I. Shappirio, appellants, *vs.* Minnie D. Goldberg and George Goldberg. Filed July 16th, 1902.



IN THE

Supreme Court of the United States,

OCTOBER TERM 1903.

NO. 87.

MARY SHAPPIRIO AND JACOB I. SHAPPIRIO,
APPELLANTS,

vs.

MINNIE D. GOLDBERG AND GEORGE GOLDBERG.

BRIEF FOR APPELLANTS.

Statement of Case.

The appellee George Goldberg on February 6, 1879, acquired the south 34 feet of lot 28 in square 977 situate in the District of Columbia fee simple; and in 1893 he purchased the possessory title to all that part of lot 2 lying immediately in the rear of lot 28 and the same was from that date occupied by said Goldberg as one property (Rec., p. 51).

He first built a store on the south part of lot 28 (No. 1247 Eleventh street, southeast), and used the side lot (now No. 1245 Eleventh street) for a yard. In the fall of 1892 he built the store 1245 and in the summer of 1893, having purchased the part of lot 2 at the rear of said lot 28 aforesaid, from John N. Gates built the stable now upon said lot and rented same with store 1247 to one Nally, who occupied it for about three years, and from that time the

whole property was occupied by the defendant George Goldberg until May, 1901.

About a month prior to May 11, 1900, L. Richold, a real estate broker, while passing the defendant's, George Goldberg's, place, 1245 and 1247 Eleventh street, S. E., saw said Goldberg with whom he is well acquainted, and Goldberg told him he wanted to sell the property (~~Goldberg~~ Richold Dep., Rec., pp. 3 and ~~101~~ 8); Richold inquired the price and was told by Goldberg he would sell for $7,000; saying the property would rent for $70 per month; Richold then made a memoranda, in a small book, of the description of the property as given by Goldberg. Sometime after that Richold saw Shappirio and called his attention to the property; on a Sunday prior to May 11, Richold and Shappirio went to inspect same; Goldberg took them through the stores, out into the back yard, and pointed out the stables to Shappirio. On the next day, or between that date and the 11th of May, Shappirio requested Thomas F. Galloway, a builder, to go with him to inspect the property and advise him of the value of same. Shappirio and Galloway went to see the property, and on reaching there Goldberg introduced them to his brother-in-law, Isaac Roginski, then took them to the back of the building and stood in the door of a small kitchen attached to the rear of 1247, looking out upon the property in question, and while so situated he told his brother-in-law, Isaac Roginski, to show them through the property and he did so, taking them through the stable of 1247 out in the alley, then from the alley into the stable of 1245 and then back into the yard (the yard to both houses being in one, with no division of any kind), where they found Goldberg still standing in the rear door of said summer kitchen. He then directed his brother-in-law to take them through the upper part of the premises, which he did. When leaving Shappirio said he would

see the agent Richold and would probably purchase the property. Goldberg told him it was a great bargain and urged him to buy. Shappirio saw Richold and offered $6,000 for the property. Richold went to Goldberg and submitted the offer and Goldberg accepted it and gave him authority to sell (Rec., p. 48). Richold then, as Goldberg's agent, accepted a deposit of $100 from Shappirio and supposed he was selling the whole of the property as covered by the premises pointed out. Richold ordered the examination of the title and preparation of the deed, and on the 5th day of June, 1900, said George Goldberg and wife made a deed of special warranty to Mary Shappirio, the wife of Jacob I. Shappirio, *but the property described in said deed did not include the back yard of 1247 or the frame stable thereon or any part of the same.* The authority to sell on its face called for the premises 1245 and 1247 Eleventh street, S. E. Lot 34 feet front by 80 to an alley. This necessarily carries everything connected with the premises; but if taken as 34 x 80, it should contain 2,720 square feet of land. While the amount conveyed is only 2,360 square feet.

Goldberg rented the property from Shappirio at $50 per month until May 6, 1901, and while Shappirio's tenant, in October, 1900, he hunted out one Rufus A. Darby, who claimed to own the proprietary or record title to said part of lot 2, *the back yard and upon which the stable of No. 1247 is located,* and obtained a deed from him purporting to convey said part of lot 2 to his (Goldberg's) wife, Minnie D.

Some time after this Shappirio heard rumors to the effect that said part of *lot 2, or the back yard and stable to 1247* was yet claimed by Goldberg. Supposing that they were mere rumors he made no investigation until shortly before filing this suit, when he learned that the deed did not contain all the property he had been shown and which he supposed he was buying. Soon after that *Goldberg built a fence around*

the yard of 1247, inclosing the small piece of lot at the rear of lot 28 and completely cutting off the yard, stable and outlet, at the alley in the rear of premises 1247; the fence being built so close to the back of the main building as to close up the door and blinds (See Ex. Phot. E). A day or so after that—May 6th—Goldberg moved out and left the property in that condition. The next day after Goldberg moved out the full condition of the matter was discovered, and on May 10th this suit was filed.

The defendant made answer, under oath, denying every material allegation in the bill. Answer under oath however was waived and therefore stands as if not sworn to, in so far as it has any weight as evidence in favor of the appellees.

The case came on for hearing upon the pleadings and proofs on the 5th day of December, 1901, and on December 10, 1901, the court passed a decree dismissing the bill, from which decree the appellants, complainants to the bill, appealed to the Court of Appeals of the District of Columbia, and on hearing before that court the decree was affirmed and an appeal taken to this Court.

Errors.

1st. The Court of Appeals erred in not reversing the decree of the Supreme Court of the District of Columbia and in not remanding the case with directions to enter decree reforming the deed made by the appellees (Rec., p. 49) so as to conform to the land designated and pointed out, at the time of the negotiating of the sale to the appellants and as described in the authority to sell (Rec., p. 48), to wit, the piece of land 34 feet front by 80 feet deep to an alley, as prayed in the bill.

2nd. The Court of Appeals erred in not reversing the decree of the Supreme Court of the District of Columbia and

in not remanding the cause with directions that the appellees be required to convey the land they agred to sell to the appellant and thereby fulfilling their contract of sale.

3rd. The Court of Appeals having found that the appellant's were deceived and misled by the situation of the property and the silence of the appellees, erred in not reversing the decree of the Supreme Court of the District of Columbia and in not remanding the cause with directions that the sale made to the appellants be rescinded, according to the prayer for alternative relief.

4th. The Court of Appeals erred in not reversing the decree of the Supreme Court of the District of Columbia and in not remanding the cause with directions that the sale to the appellant, Mary A. Shappirio, be vacated and annulled and the appellee, George Goldberg, required to refund her, Mary A. Shappirio, the amount paid to him for the property, as asked by the prayer for alternative relief.

Argument.

Notwithstanding that two Courts have passed upon the facts (the appellate court having found fraud to exist in the case) this Court will examine into the record and if it finds the conclusion wholly unwarranted by the testimony, it will reverse the lower court.

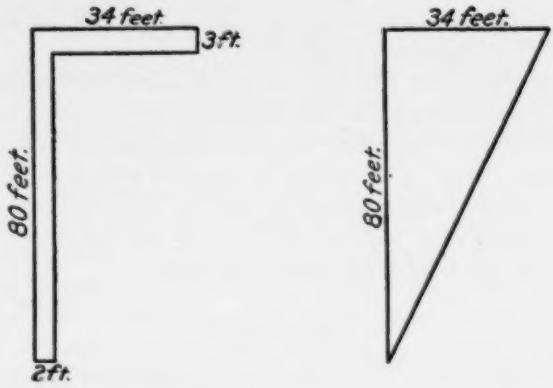
Beyer *vs.* La Fevre, 186 U. S., 114, 119.

Points on the Opinion of the Court Below.

I desire to call the Court's attention briefly to some remarks in the opinion of the court below, which begins on page 227 of the record. On page 228, the court says that the description of the premises covered is in exact conformity as to the front and depth of the lot, and to the description of the property authorized to be sold and which

was contained in the contract of sale and purchase, signed by all the parties concerned.

I submit, by no possible reason can such be the case, for the authority to sell, described the land as 34 feet front by 80 feet to an alley, and if the land conveyed is 34 by 80, then a tract of land as indicated by the following cuts would be likewise :



A piece of land 34 by 80 feet contains 2,720 square feet, while the land conveyed by the deed (Rec., p. 49) contains only 2,360 square feet. A piece of land 34 by 80 feet can be nothing more or less than a tract 34 feet one way and 80 feet another.

As I understand the language used in the authority to sell, 34 feet front by 80 feet to an alley (Rec. p. 48) the words "by 80" has the same meaning as if it had read "34 feet front and running back that width, 80 feet, to an alley." It seems to me it could mean nothing more or less. Certainly if a man sold me a stick of lumber 8 by 8, I would not expect to get one 8 inches on two sides and 1 inch on the other two.

The word "by" in a contract will be treated in the sense it was intended by the parties, as gathered from the surrounding circumstances, and is often used in place of "x" for abbreviation in giving the dimensions of any particular thing.

> "A bracket 3x5 is 3 feet by 5 feet or three feet on one side and five on the other."
>
> Jaqua *vs.* The Withram and Anderson Co., 106 Ind., 545.

> "The word 'by' or 'from' used to express boundaries are lines of exclusion, unless by necessary implication they are used in a different sense."
>
> Willis *vs.* Iron Co., 48 N. H., (see page 538), 11 N. H. 485, Ib. 520.

While the agreement of sale does not mention any other land than lot 28, yet it can be plainly seen that the parties intended buying all the land used and occupied by the premises. By the receipt for the purchase money (Rec., p. 12) the property is designated No. 145 and 1247 (should be 1245 and 1247); the court below says no other improvements are mentioned in the paper than the two brick stores.

Can it be contended that it is either customary or necessary to mention or describe the woodsheds and yard, to a piece of improved property, in giving a receipt for the earnest money?

In another part of the opinion (Rec., p. 228) the court suggested that the trustees under the deed of trust are not parties to the suit. If it had looked on page 11 of the Record, it would have noticed that by stipulation of the parties it was agreed that they not should be made parties. No question of the kind was ever suggested by the appellees in

either court below. If they desired to suggest want of proper parties, the trial court was the place to do it.

The Court says further:

"The apparent relation of the yard and shed in the rear of lot 28 to the front lot was such as well calculated to produce the impression from a mere inspection that they constituted part and parcel of the entire premises (Rec., 230). But the purchaser was bound, etc." How could he know when he had nothing to put him on his guard? And on the same page the Court said: "But we, nevertheless, think it probable that the plaintiffs, or rather Jacob I. Shappirio, was really deceived and mislead by appearances as to what in fact did constitute lot 28 purchased of Goldberg." Now, I submit, that under the authorities I shall quote, when the Court below found these facts, in order to relieve the appellees of the charge of fraud, it was imperative to find that they, the vendors, did everything in their power to avoid this deception and prevent the ~~customer~~ purchaser from being misled, and it is not conceded they did so in the slightest degree. The authorities cited by the court below to sustain its ruling have no bearing upon the case from any standpoint.

The court says it is conceded that Goldberg did not own the land, etc. (Rec., 230). In what way and how is it conceded? For what was all the evidence tending to show the possession of the Goldbergs and those under whom they claim?

The question as to whether a certain case is an authority on the question of fraud must be considered in the light of the surrounding circumstances in that particular case. In writing an opinion, where a question of fraud is involved, the court necessarily has in view the facts in that case, therefore an opinion based upon a state of facts in a case where the court fails to find fraud should not be a guid-

ance in one where fraud is found, but the court below did not follow this principle; for it will be seen that no fraudulent act or misrepresention was found to have been made in either case cited.

In the case of Staughton *vs.* Gleason, 13 Wall., 379, 383, cited, was a case where Staughton purchased a steamboat of Gleason. Staughton did not want a boat to draw more than 3½ feet of water. Gleason said he did not know, not being a boatman, just how much she drew. But before the contract of sale was made, Staughton, the purchaser took a ship carpenter with him to New York for the purpose of examining the boat and while there every opportunity was given him to make such examination, and he did examine it from one end to the other and the court found there was no fraud. Mr. Justice Field in delivering the opinion of the court said (page 385),

> "but justice to him (the vendor) requires us to say that the evidence is insufficient to warrant the conclusion of fraud, the vendor states he was not a steamboat man, evidently meaning from the context, that he was not familiar with the particulars, regarding to which the purchaser desired information and referred him to the captain, at the same time inviting him and his party to examine the boat in every particular. The measurement made by one of the carpenters showed that the boat drew 4.6 feet of water at midship, whilst lying unloaded at the dock."

How can such an authority where the charge of fraud was wholly disproved be applied to the case at bar? Compare the above case with what was said in the case of Stewart *vs.* Cattle Co., 128 U. S., 383, and Nesbit *vs.* McFarland, 91 U. S., 101, where fraud was found.

And now take the case of Atlantic Deland Co. *vs.* James,

94 U. S., 207 (the next case cited by the lower court), a suit alleging fraud in a stock transaction. In that case the court said (p. 210):

> "A careful and thorough examination of all the evidence submitted, fails to convince us that there was any substantial error in the statement or that it did not truly exhibit the condition standing and the account of the company when given."

So how can this case be considered an authority, when compared with the case at bar, where the court below said (Rec., p. 230): "*But nevertheless, we think it possible, that the plaintiffs or rather Jacob I. Shappirio, was really deceived and misled by appearances as to what in fact did constitute lot 28, purchased of Goldberg.*" Who deceived him? Did the good brown earth do so? Or did some individual? The learned Justice says (Rec., p. 230) "though Goldberg may not have made any positive representations, he was not required to do so." Why was he not? If the small part of lot 2 was not a part of the premises or the land meant to be sold, did he not deliberately conceal that fact and did he not fail absolutely, if such was the case, to inform the purchaser that it was not a part of the premises, while standing upon it and pointing out the stable on the lot." (Rec. p. 17.) Can it be said that it was not his duty to inform him if such was the case?

> "In a court of conscience, deliberate concealment is equivalent to deliberate falsehood."

Compare these words used by Mr. Chief Justice Waite in delivering the opinion of this Court in the case of Crosby *vs.* Buchanan, 23 Wall., 420, 450, with the opinion in this case and see Kerr on Fraud and Mistake, pages 101, 102.

Now take Crymes *vs.* Saunders, 93 U. S., 556, the next

case cited by the Court below In the very first part of the opinion we find the Court saying:

> "The record discloses no grounds for any imputation against him (the vendor). It was not claimed in the discussion of the case at bar, nor is it insisted in the printed ~~agreement~~ submitted by counsel for appellees, that there was on his part any misrepresentation, intentional or otherwise, or any indirection whatsoever. Nor has it been alleged that there was any intentional misrepresentation or purpose on the part of others."

In the above case the vendor owned two tracts of land and the purchaser went to look at them to ascertain the value as to supposed gold deposits. The vendor's son drove the purchaser and his attorney to the land to be sold; they arrived there after dark and remained in a small house on the property all night. The next morning in looking over the property they met a man, who after talking with them of the land sold, took them to an old abandoned shaft which they supposed was on the premises. The vendor did not know anything about the man who did this; he had nothing to do with him. And the court further said: "There was no material difference between the two tracts." On page 61, it also said, "The subsequent conduct of the appellees shows that the mistake had no effect upon their minds for a considerable period after the discovery and there seems to have been rather a pretext than anything else. Yet this case is cited as an authority in a case where the court found the purchaser really *deceived.*"

In the case of McLean *vs.* Clapp, 141 U. S., 429, one of the authority cited by the court below, was a case to rescind a sale of a store and stock of goods made in 1855; the consideration of which was four mortgage notes, aggregating $5,000.00; soon after the sale, one note was paid. The last

of the notes fell due in 1857. When this occurred, suit was brought to foreclose the mortgage, which was compromised in 1857 and other and different securities were given in lieu of the unpaid notes. In 1861 the vendor of the store became dissatisfied with his attorney, who had made the adjustment in the foreclosure suit, and discharged him, placing his business in the hands of another attorney, who notified the purchaser of the store and stock that his client repudiated the settlement made with the former attorney. But nothing was done until 1872, when suit was begun (11 years after) to set aside the settlement and foreclose the mortgage, which it seems had not been released of record, though it was understood and agreed that it was satisfied. And in that case, the court (having in mind the facts of the unusual delay) used the words set forth in the opinion of the court below. But the learned Judge below did not take into consideration that fifteen years had elapsed since the transaction complained of occurred, nor did he quote the following words used in that opinion, quoting Crymes *vs.* Saunders, *supra*, viz: "These remarks are peculiarly applicable to speculative property, like that in question, which is liable to large and constant fluctuation in value."

How this case can be applied to a case where the suit was brought within one year from the date of the first transaction, six months after the first rumor had reached the appellant's agent, and ten days after the true condition was found out, certainly the property involved is anything but speculative.

Compare this case with the case Pence *vs.* Langdon, 99 U.S., 578, and Dickerson *vs.* Patterson, 160 U. S., 584, foot of 591, where the court said: in the first case:

> "Acquiescence and waiver are always questions of fact. There can be neither without knowledge. The terms import this foundation for such action. One can-

not waive or acquiesce in a wrong while ignorant that it has been committed. CURRENT SUSPICION AND RUMOR ARE NOT ENOUGH. There must be knowledge of facts which will enable the party to take effectual action. Nothing short of this will do. *The wrongdoer cannot make extreme vigilance and promptitude conditions of recission.* It does *not lie in his mouth to complain of delay, unaccompanied by acts of ownership and by which he has not been affected.*"

The case of Southerland Development Co. *vs.* Silva, 125 U. S., the last case cited in the opinion by the lower court, was a question as to whether or not the fraud charged was established. The bill was answered under oath, and such not being waived it was held that the proof did not establish the charge of fraud. In the case at bar, though the answer is under oath, it was waived by the bill and cannot be deemed evidence for the defendant. The case last mentioned was a mining claim, the thing of the most interest to the purchaser was the value of the ore on the property, the parties fully investigated before buying and the court distinctly held that no fraud or misrepresentation had been made, so neither can this case be applied to the one at bar.

This completes the authorities cited to sustain the opinion of the court below, and I shall now refer to some of the facts to show that fraud and misrepresentations are manifest in this case.

The court further intimates that the appellants did not act promptly after discovering the fraud; but I respectfully submit, that a slight examination of the evidence in the case will show that the suit was begun within a few days after the true condition of affairs was known to them, and by the rules of law established by this court, they were not required to act until they were fully aware of the true situation and fully advised in the matter.

Points and Comments on the Evidence.

Many of the material allegations in the answer of the appellees are wholly and in fact admitted to be false by their own evidence. The bill charges that Mary Shappirio through her husband agreed to purchase the land mentioned in the statement of the case and that it should have been conveyed as described in paragraph 3 of the bill (Rec., p. 2).

That Goldberg had occupied the entire property for many years as described and that the same was all inclosed as one place. The transaction in relation to the transfer of title was left to Richold, Goldberg's agent. That they, the complainants, relied upon what had been told them about the quantity of the property. That they suspected no wrong and did not examine any of the papers.

The defendants under oath deny absolutely that George Goldberg built the frame building upon the back yard of property; saying a former owner built it (Rec., p. 9). The court's attention is specifically called to this, for the evidence shows beyond doubt that he did build said stable and this statement was made under oath, knowing it to be false.

Goldberg obtained the permit for building the stable himself and said he was the owner of it (Permit, Rec., p. 35).

Witness **Nally,** his tenant, says there was a yard about 30 feet deep when he rented the store premises 1247 (Rec., p. 24).

"I told him if I took the place I would have to have a place for my horses." He (Goldberg) got the man Selby to build it. Goldberg employed Selby to build it (Rec., p. 22). It was built for me. I used place as a stable" (Rec., p. 24).

Witness **Campbell** says (Rec., p. 178) his father, who kept a lumber yard adjoining the square in which this property

is located (Campbell's place can be seen from the photographs on file, Rec., p. 181), removed a bank of dirt from the piece of land in the spring of 1893 (Goldberg says likewise in his deposition, Rec., p. 204). That soon after that Goldberg came and told him to let the carpenter (who accompanied him) have the lumber. "It was rough lumber for a shed" (Rec., p. 179). "Goldberg paid for the lumber; I remember distinctly because he wanted a rebate on the bill."

> "It was paid to me (Rec., p. 179). I can swear that the lumber we furnished him was used by him to build a shed in the rear of his house. The house occupied him on Eleventh street at that time. The shed referred to was put there soon after the dirt was removed. I was there watching the erection of the building" (Rec., p. 181).

His wife, appellee Minnie D. Goldberg, not on information and belief, but positively swears to the same allegation as her husband. This shows her recklessness in taking an oath to something that she had no knowledge of. She did not marry Goldberg until 1896.

In the 10th paragraph of the answer they say:

> "The defendants specifically deny that said stable or shed or improvements was placed upon same (Pt. lot 2) by George Goldberg, but on the contrary it was built by a former owner."

The person they refer to as owner is John N. Gates, now deceased, who Goldberg paid $30 to for the possessory title which he (Gates) had in the property (Goldberg's Test., Rec., p. 210. See also Test. John H. Gates, Rec., p. 30). Gates purchased all of lot 2 in 1885 (see link 6, Chain of Title, Rec., p. 53). It was assessed in his name until 1890,

and he paid taxes upon it (Simmons Dep., Rec., p. 43) and he had possession (Gates' Ev., Rec., p. 30).

Gates says it was always known as Goldberg's property (Rec., p. 31); and he always occupied it (Rec., p. 31). "Father did not build stable;" "I can state *from my own* personal knowledge: The stable has been on the lot ten years" (Rec., p. 33).

So when Shappirio went to look at the property it was all occupied as one place, yet the defendants appellees in their answer, under oath, say:

> "These defendants deny that the said part of lot 2 was always used and occupied by the defendant, George Goldberg, as part of said premises No. 1247."

This allegation is wholly false, and why it was made I cannot understand, for it is admitted by both of them in their evidence that it was occupied by Goldberg or his tenant from 1893 to 1901. John H. Gates, the son of the former owner of the possessory title, says:

> "It was occupied by Goldberg from the time his father sold it to him until Mr. Goldberg sold it" (Rec., p. 31).

Nally, Goldberg's tenant, says Goldberg occupied the premises ever since he moved out in 1895 (Rec., p. 24).

Issac Roginsky, Mrs. Goldberg's brother, says while Goldberg lived there he used the stable for the storage of different things (Rec., p. 120).

Mrs. Goldberg went to live in the property, 1247 Eleventh street in 1896, and a couple of years after that Goldberg told her he did not own the stable and lot upon which it stood. That Goldberg was allowed to use it by Gates (Rec., p. 218). Goldberg says that it was always occupied by him after he got it from Gates. Such being the case their

answer stands as having been knowingly falsified. Both of them in their answer say positively that Shappirio was told at the time of the sale that this piece of ground did not belong to Goldberg. *"Note this part of answer."*

> **"The said George Goldberg, prior to June 5, distinctly told said Jacob I. Shappirio that he, the said George Goldberg, did not own the stable on said lot 2 nor the land upon which said stable stood"** (Par. 4 of answer).

Yet, in his evidence (Rec., p. 202), he says he—

> "made no statements to Richold or Shappirio in regard to whether or not the stable in rear of 1247 belonged to that property or to me." "The question was not asked, there was nothing said about the stables or anything else."

On page 204 he says:

> "In fact I never had any conversation of any kind about the stables. I never had any conversation whatever with Richold or Shappirio, prior to the sale, regarding the ownership of the stable in rear of 1247" (Rec., p. 205).

I deem this sufficient to show, at least, that the Court must look with suspicion upon the evidence and statements of the appellees, but later I believe it will be made to appear that the evidence of both of them is without credence.

The Defendants Made False Representations and Purposely Allowed the Appellants to be Deceived.

Mary Shappirio says personally she took no part in the buying of the property and knows nothing but what she was told by her husband and did not read the deed (Rec., p. 13).

Richold says Goldberg gave him the property to sell a month prior to May 11th (Rec., p. 60).

Prior to May 11th he and Shappirio went to look at the property. "Yes, we looked at it before. I think it was the Sunday morning" (Rec., p. 14). He said to Goldberg, "Be kind enough to show Shappirio the property, which he did."

They went out into the back yard of 1247 and he left them standing talking, while he went to urinate in the stable and they were standing there when he came back. "They were standing right in the yard of 1247" (Rec., p. 14).

Richold says, referring to his first part of the transaction: "I did so with the understanding that there was no trick behind it" (Rec., p. 15).

Learned of property not being included in deed five or six months after sale, when he, Goldberg, called my attention to the water closet.

> "It looked like an excuse to call my attention to the small piece of ground.
>
> "Goldberg said 'here is a small piece of ground that belongs to me.'
>
> "I thought just about that time if the ground would open I would go down at such a deception (Rec., p. 15).
>
> "Death sweat came right out on me when he told me how he deceived him that way" (Rec., p. 16).

Cross-examination:

> "He gave me the property to sell a month prior to May 11th," (Rec., p. 60). "I was not the agent of Shappirio" (Rec., p. 60).
>
> "I thought an honest man would sell the whole."
>
> "I could not sell it unless he was satisfied" (Rec., p. 61).
>
> "I never knew there was any trick about it and wish to God I never had anything to do with it" (Rec., p. 61).

"If I was dying I wouldn't say anything different" (Rec., p. 61).

"Well, let me tell you, you have this property to sell; you take me out into the yard, and why, if you are an honest man, don't you come up and say this is the only ground, only to here? Why don't you say so and don't mislead me or anyone else with any trickery behind it?" (Rec., p. 62).

"When told to sell I understood him very plain, I will sell you the whole business with improvements thereon and I never investigated" (Rec., p. 62).

"Yes, he deceived me" (Rec., p. 63).

"Called me back to see water closet; that was only an excuse" (Rec., p. 63). Produced old book showing how property was described when given to him (Rec., foot pp. 64 and 65).

"I took it the way he told me; did not know stable stood on lot 2" (Rec., p. 65).

"If you can't trust a man, you had as well be dead" (Rec., p. 65).

"I thought Goldberg honest and did not look any further" (Rec., p. 65).

"Only had title examined to see what trust was on it" (Rec., p. 66).

"I thought it such cheating I did not like to tell Shappirio" (Rec., p. 67).

"Goldberg says this belongs to me, I can shut it off" (Rec., p. 67).

"Mrs. Goldberg was in store and remained until I left."

"No such conversation as only part of lot running back to alley ever took place at signing of contract" (Rec., p. 173).

Goldberg paid him $180 commission.

Shappirio paid him nothing (Rec., p. 67).

He did not tell Shappirio for eight or nine months what Goldberg said (Rec., p. 68).

"It was such a deceit, such a deception I did not know what to say" (Rec., p. 68).

"When told to sell property of that kind I do not ask if this or that belongs to it" (Rec., p. 69).

"Goldberg never said the stable did not belong to him and I never gave it the least consideration." "I thought he sold the whole business." "I thought it was all in there what was there" (Rec., p. 15). "I went on May 11th and submitted Shappirio's offer of $6,000; Goldberg accepted and gave me authority to sell it" (Rec., p. 14). "I asked him size of lot and he said 34x80 to alley with improvements thereon and gave me authority to sell" (Rec., p. 48).

Jacob I. Shappirio says:

Richold came to him and offered the property for $7,000.

He took Galloway, the builder, to see it, to advise him of its value. Goldberg introduced them to his brother-in-law, Isaac Roginski; he took them through into the yard of 1247 and told his brother-in-law to show them through the property. Thought the stable and everything belonged to it (Rec., p. 16).

Roginski took them from the yard of 1247 out into the alley, where he saw a goat they had at back of stable (Rec., p. 16).

"He took us first into the stable of 1247 (property in dispute) through the alley into stable of 1245, a much smaller stable" (Rec., p. 17).

"**And I even spoke to Mr. Goldberg at the time, saying, that if at any time I wanted to build a stable I could make one stable out of the two which would make a decent stable out of it, etc.** I told him I would see Mr. Richold and I guessed would finish out the sale" (Rec., p. 17).

"He pointed it out (the stable) himself as well as his brother-in-law" (Rec., p. 17).

"I left the examination of papers or title to Richold (Rec., p. 17). I had no reason to disbelieve Goldberg or that he would defraud me" (Rec., p. 17).

"Only read the description of the amount of indebtedness in deed of trust; that was the only thing that I cared to look at (Rec., p. 17). He said, 'take him through and show him all the grounds and stables;' he was standing in door of kitchen (Rec., p. 79).

"Had no suspicion (Rec., pp. 17 and 18).

"And had no reason to suspect him (Rec., p. 17).

"Depended solely on Richold for examination of title (Rec. p. 17), but not for quantity.

"*Did not know anything definite until I saw the fence* (Rec., p. 20).

That was after Goldberg had moved out, about four days before the bill was filed.

"Went to see Goldberg after fence was there, but did not see him; saw brother-in-law; did not think it worth while to talk to him" (Rec., p. 21).

Cross-examination:

I did not know condition until Mr. Goldberg moved out (Rec., p. 84).

"Roginsky said Shappirio bought lot in front and sister has him behind" (Rec., p. 84).

I consulted Bigelow only a short time before I saw Mr. Simmons (Rec., p. 85).

When Richold told me what Goldberg said, he did not tell me the ground did not belong to me, only that it was not included in the deed (*Rec., p. 85*). The fact of the land being omitted from the deed, and that of the appellants tenant claiming title by grant of it are separate propositions; the latter at least required a lawyer's investigation.

Thomas F. Galloway says:

Goldberg told his brother-in-law to show them the property. "You take Mr. Shappirio out and show him the prop-

erty." Mr. Goldberg went back to the rear door and Mr. Goldberg's brother-in-law went out in the rear with us, and he carried us out and showed us the property, and among other things showed us stable on said lot (1247).

> "He said look out for the bulldog, don't get too close to the stable or the dog might bite you."

He had a lot of chickens and ducks all around there and showed us the entrance to the property and carried us to the north lot and said the stable on that did not amount to very much, but would do in a case of emergency to keep a wagon or something of that kind.

> "He explained the whole thing to us and practically told Mr. Shappirio in my presence that both of those stables belonged to the property he was buying."
>
> "Mr. Goldberg stood in the south door of the little frame building on the north side of the north house, while his brother-in-law showed us the stables and what improvements were on the property" (Rec., p. 20). "All the back yards are in one; that's my recollection of it" (Rec., p. 27).

Witness points out place upon photograph Exhibit E where a dog was standing and stables they looked at (Rec., p. 27).

Mr. Fields, the attorney for the appellees, produced the brother of Isaac Roginski, to see if the witness Galloway would say he was the person referred to as having shown the property, and he said he was not the person (Rec., p. 94).

The one who did was produced and he recognized him (Rec., p. 176). Says that the first time he went to see the property was when it was shown by Ike Roginski. "It was before the sale" (Rec., p. 176). When shown the property

he went through 1247, through stable off 1247 into alley back of 1247.

When he and Shappirio went to look at the property they were shown through all of it (Rec., p. 29) notwithstanding Goldberg's sworn statement (par. 5 off answer Rec., 8) the appellees do not pretend, in their testimony, that Shappirio was told that the small piece of land in question did not belong to the premises No. 1247. It is said by Goldberg that nothing was said about it. Goldberg says:

> "In fact I never had any conversation whatever with Shappirio about the stable or about the erection of a new stable. I never had any conversation with him in that respect at all (Rec., p. 204), and I never told Richold I had two stables. I never mentioned the stables to him when he came there with Shappirio on Sunday. I never had any conversation whatever with Richold or Shappirio prior to the sale regarding the ownership of the stable in rear of No. 1247."

This is an admitted fraud. Yet in his answer Goldberg says positively he did inform Shappirio that the back yard did not belong to the property.

The Taking of a Deed to the Back Yard Was a Part of the Scheme to Defraud.

When Goldberg committed this fraud, the damage resulting therefrom placed him in the position of debtor to the appellant Mary A. Shappirio and under such a condition it was incumbent upon the wife, claiming in opposition to the creditor of the husband, to show by proof unequivocally, that the property had been paid for from her own means, **even if she were not a party to the fraud.**

> "In a contest between the creditors of the husband and wife, there is and there should be a presumption against her, which she must overcome by affirmative

proof. In the case of purchase after marriage the burden is upon the wife to prove distinctly that she paid for it, viz., the property purchased by her with funds not furnished by her husband."

Seitz *vs.* Mitchell, 94 U. S., 580, and cases cited.

Goldberg paid Darby for his claim to the small piece of property and put it in his wife's name to defraud complainant.

Clark says he had often talked with Goldberg and tried to sell the piece of property to him for the last ten years (Rec., p. 166).

"Several years ago I called to see him about sale of lot while he was on 11th street and he talked about price of the lot and the surrounding ground being sold at 15 cents per foot.

"Saying he did not see why he should pay more than that" (Rec., p. 166).

Soloman Lewis, Goldberg's brother-in-law, offered him (Clark) 25 cents per foot for Goldberg before it was sold (Rec., p. 168).

Goldberg stopped him on the street half a dozen times to talk about purchase of lot (Rec., p. 168).

Says, in his opinion, the property is worth only about 10 cents per foot, if not taken in connection with the other lots (Rec., p. 169).

And considered it almost invaluable to the property fronting on Eleventh street (1247) (Rec., p. 170).

He considered it of great value to the (1247) Goldberg property, but of small value to front of lot 2 (Rec., p. 171).

Witness **Darby,** who claimed the record title to the small piece of land, says:

Goldberg negotiated for the sale of the piece of land and first called to see him about it several years ago.

"He had been talking about it some time" (Rec., p. 21). In August, 1900 (three months after sale) Goldberg paid a

deposit of $20 in cash, and in October paid $200. Mrs. Goldberg's name was not mentioned until he was closing up the matter.

> "He said I was charging him an outrageous price for it. He made several offers much below $300. I know the first offer was nothing like what I got for it" (Rec., p. 22).

Said he thought $300 an exorbitant price; never had any other offer for it from any one else, and never offered it to any one else (Rec., p. 55). The piece of property he considered a key to whole or necessarily belonging to the Eleventh street property (Rec., p. 56). Goldberg said he did not know Darby personally until this business transaction (Rec., p. 206). Yet Darby says he had been talking about it for some time, several years before the sale (Rec., p. 21). Was positive of more than a year (Rec., p. 21). Though Goldberg says the transaction only lasted three days (Rec., p. 206), and he saw Darby only once (Rec., p. 211).

Lewis, Goldberg's brother-in-law, says he talked with Goldberg and his wife about the property before Darby made the deed to Mrs. Goldberg.

That Goldberg sent him to see Darby and told him to offer anything from $150 to $200 for it; that he wrote Darby as requested (Rec., pp. 187–190).

Yet both of said defendants say positively that they never talked about it to any one, excepting Clark, prior to the time it was bought (Rec., pp. 207, 211 and 222), and never made an offer for it.

The tale of Mrs. Goldberg, that it was her money that paid Darby, is not true.

Goldberg says he never saw her have a cent.

> "She had no business of her own" (Rec., p. 212).

"She told me to go and buy it, there was a rumor among the neighbors that the front part vas going to be sold" (Rec., p. 212).

The front part of lot two was owned by Louis Goldberg, the appellee George Goldberg's brother, who says he never offered his property for sale and did not authorize any one to do so (Rec., p. 157). He says he always pays his debts, only had a small mortgage upon his place (lots one and front part of two). "It never was for sale. Has owned it since 1895." "Never heard a rumor about it being for sale; if it was for sale I ought to know it" (Rec., p. 158).

Solomon Lewis says the firm of Roginski & Lewis existed for about ten years and ceased in 1894 or 1895 (Rec., p. 110). (Mrs. Goldberg's employment ceased in April, 1893.)

Does not know what Mrs. Goldberg received while employed (Rec., p. 110).

"Her brother furnished her silks." "I do not mean that" (Rec., p. 110)

Cannot say that she had any money (Rec., p. 114).

When Lewis Roginski left Washington he left creditors (Rec., p. 115).

I do not know whether she had a dollar or not when she married Goldberg (Rec., p. 116).

Minnie D. Goldberg says she began working as a cash girl at Baum's at $2 per week when she was fourteen years old (Rec., p. 222); and was raised gradually until she received $5 per week; that was in 1887. Says when she left Baum's she had about $200. When she left there she remained home about a year. Then went to work for Lansburgh Brothers (Rec., p. 217). Lansburgh's books show she began work in November, 1889, at $5 per week (Rec., p. 195).

In September following 1890 her pay was increased to $6 per week; and on December 19, 1891, she received an increase to $7 per week, and continued at that until April 1, 1893, when her employment ceased (Rec., p. 195). When she left Lansburgh's, she says, she had $600 or $700. Of that amount she had $500 left when she married Goldberg in September, 1896 (Rec., p. 217), **(though he never saw her have a cent).**

> **"Have some left now. He did not give any money to me, never at all** (Rec., p. 217). I sent Goldberg to buy the piece of ground because I was sick at the time."

This would indicate Lewis, her brother-in-law, had nothing to do with the purchase.

> "After I bought this piece of property I made arrangements to prepare myself to buy the front part of lot 2 when sold, by joining the Equitable Building Association. No part of the money which I have paid into the building association has been received by me directly or indirectly from my husband" (Rec., p. 217).

She began to pay into the building association November 13, 1900, and up to the time she was testifying had paid twelve installments of $12.50 each (Rec., p. 224). $150 00

Said she still had several hundred dollars	
Say (Rec., p. 223)	200 00
She paid for the lot	300 00
$30.50 for certificate of title and $5 for survey	35 50
Total accounted for (Rec., p. 152)	$685 50

So, according to her story none of this amount was given to her and she had but $500 in September, 1896, and "*spent some of that occasionally for different things,*" and made none

after that date. *How did the remainder of the $500 she had in 1896 increase to $680.50 in September, 1900?*

To say a girl 14 years old, by working as cash girl and clerk and whose family of nine or ten people who lived over a paint shop, in five rooms (Ike Roginski's Test., Rec., p. 127), while supported by a brother, a mechanic, who often had to borrow money to make ends meet (Yudelevitz Test., Rec., 171), would in a few years save $600 or $700, is so improbable and unusual it is scarcely creditable. But when she says she kept this money for seven years to invest in the back part of a lot because she heard **"rumors"** from customers coming in the store that the front was to be sold (Rec., p. 222), as she says, is so frail a story it cannot be believed. It is evident that this small piece of land was purchased with the intention to defraud Mrs. Shappirio, otherwise the sum of $300 would never have been paid for it.

Witness **Donohue** says—

"That lot is worth about $30 or $40 and is of no use excepting to owner of front lot" (Rec., p. 36).

"I place that value upon it to an outsider" (Rec., p. 37).

"To take it away from 1247 Eleventh street would cause large damage. I could not say how much" (Rec., p. 37).

"The small piece of ground is not worth $300. If it was sold for that I would say that the purchaser meant to get $100 or $200 out of some one else" (Rec,, p. 38).

"He never gave that for it for himself" (Rec., p. 38).

"Front ground on N street is only worth 25 cents per foot" (Rec., p. 39). "If such a piece of property was offered at auction there would be no one at the sale (to bid)" (Rec., p. 39).

"The small piece of ground is worth a great deal more to Eleventh street property than to any other."

Explains why it is worth more to Eleventh street than to N street (Rec., p. 39).

Witness **Aukam** says:

"That the piece of lot to itself has no value excepting as part of yard to 1247; would be great damage to cut it off" (Rec., p. 44).

"Situation as to lot 2, on N street, is not near so critical as Eleventh street" (Rec., p. 44).

"Lot 2 has an abundance of room" (Rec., p. 44).

"Its position is one that is very damaging if taken away from 1247."

No offer was made to contradict these witnesses, who are experts.

Goldberg says himself that the price paid was outrageous (Darby Tes., Rec., p. 22). Darby, the seller of the property, says that the price was exorbitant; that he never had an offer from any one else for it. Clark says that it is worth about 10 cents per foot (Rec., p. 169).

The witness **Isaac Roginski,** the brother of the defendant, Minnie D. Goldberg, cannot be relied upon any more than the defendants can. Referring to the time Goldberg gave Richold authority to sell the property, he says (Rec., p. 118).

"Q. What, if anything, was said by Goldberg about the dimensions of the property?

"A. While Mr. Richold was reading the paper, Mr. Goldberg made the remark 'Stop;' he said one lot don't run back as far as the other.

"Q. Was anything said about only part of the lot running back to the alley?

"A. **No sir.**

"Q. Did Goldberg say that the whole of the lot ran back to an alley?

"A. **No sir, only a part of the lot.**"

On page 130 he said he knew the date the paper—authority to sell—was signed. That Richold and Shapirio called on the Sunday before the paper was signed.

> ' That was the first time I ever saw him. The next time he came it was on Friday.
> "Q. You are positive it was Friday?
> "A. Yes; I know it was Friday. I always know when it is Friday."

He could not remember any other day or what he had done any other day. Said no one had talked with him about the date, and he had not examined the paper, yet he was positive it was Friday.

> "Q. How did you know his name (Richold's)?
> "A. I heard Mr. Goldberg call him by name.
> "Q. What date was that?
> "A. Friday.
> "Q. That was on Friday?
> "A. Yes.
> "Q. **Was that the first time you saw him?**
> "A. **Yes**" (Rec., p. 132).

He first said he saw Richold and Shappirio on the Sunday before, and that was the first time he saw him (Rec., p. 130).

On page 130 he said nothing was said about only part of the lot running back to alley, and afterwards he says (Rec., p. 133), Goldberg told Richold only part of lot ran back to alley, etc.

> "Q. How long was she (Mrs. Goldberg) there at the time the contract was signed?
> "A. A few minutes, she just came in and signed it, stayed there a few minutes then went out.
> "Q. And went right out?
> "A. And went right out."

Says the suit was not mentioned to him and he never talked about it (Rec., p. 130).

Says that photograph, Exhibit E, does not represent back part of house (Rec., p. 135).

Never saw Galloway in his life (Rec., p. 136).

Never was any dog kept there (Rec., p. 137).

Could open stable door from alley (Rec., p. 139).

Never did know that Goldberg did not own all the property (Rec., p. 139).

Says Goldberg told Richold that he did not own it (Rec., p. 139).

He first said, nothing whatever was said about it.

See conflicting statements of what was said to Richold about stables (Rec., p. 143).

The Court should not only look with suspicion upon the evidence the appellees, George Goldberg and his wife aforesaid, and that of the brother-in-law, Isaac Roginski, but should disregard such altogether.

Falsus in uno falsus in omnibus.

The question of the goat and dog being about the premises was not material, and no attention would have been paid to same, excepting for the fact that the attorney for the appellees attempted to rebut the evidence of Shappirio and Galloway, in which they referred to said animals by showing that no such animals were owned or kept by the appellees about the premises. If they will tell a deliberate falsehood about such an immaterial matter, what will they do as to material matters?

Goldberg says he knows nothing about said animals being about the place (Orig. Dep., p. 107).

("Don't know if we had a dog in the yard or not.")

Mrs. Goldberg says (direct ev.): "I don't remember if we had a goat there at the time of sale" (Rec., p. 215).

"I don't remember if we had a dog there at time of sale" (Rec., p. 218).

Cross-examination :

"I don't know anything about a dog there in May, 1900."

"I had the goat long before my first child was born and have not had a goat since" (Rec., p. 220).

"My living child is twenty-one months old. She was born January 1st, 1900" (Rec., p. 220).

So it was fully three years after her first child was born when the sale was made, and she could not have been mistaken as to the time these animals were there.

Her brother (Isaac Roginski), attempting to corroborate this falsehood, says :

"There was no dog there in the yard of the houses in question. There was no dog on premises" (Rec., p. 136).

Emphasizes the statement that there was no dog and he did not show the property (Rec., p. 137).

It is clearly shown that these statements are false. Both Galloway and Shappirio say they saw these animals at the place at the time the sale was made, and their neighbors say :

Abe Sakolski, who lived there in one of Goldberg's houses (1245), says he saw a dog and goat in the yard. A year prior to Goldberg's leaving, dog and goat were both there (Rec., p. 159).

Isaac Sakolski, who lived next door to 1245, often saw Goldberg and his brother-in-law tying goat in alley (Rec., p. 163).

"Dog was there all the time and goat from the time of birth of second child" (Rec., p. 163).

States who goat was bought from and in whose possession it was left when they moved away in 1901 (~~Rec., p. 16~~).

Saw both dog and goat in yard many a time (Rec., p. 164).

Points and Authorities.

The back yard and stable was an appurtenant to the house
Manogue *vs.* Bryant, 15 Appeals, D. C., 245.
Sheppard *vs.* Pepper, 133 U. S., 706.

If Goldberg did not own the small piece of land *and did not intend it should be* so understood it was his duty to disclose the fact and state that it would not be included in the sale.

While it is clear that the property in dispute is an appurtenant and a part of the property, and that Goldberg did represent it to be a part of that which he proposed to sell, yet if he did not, as he claims, it was his duty to state distinctly that it did not, and if he failed to do so, there being nothing to indicate to the contrary, it was absolute fraud on his part. Mrs. Goldberg is a party to this fraud and aided her husband in the practice of it and is chargeable as well as he.

Lincoln *vs.* Claflin, 7 Wall. 132.

"In a court of conscience, deliberate concealment is equivalent to deliberate falsehood."
Crosby *vs.* Buchanan, 23 Wall., 454.
Kerr on Frauds and Mistakes, 101.

"Deliberate concealment is deliberate fraud."
Henderson *vs.* Henshaw, 54 Fed. Rep., 320.
Tyler *vs.* Savage, 143 U. S., 77.

In the last named case the court cites the case of Stewart *vs.* Cattle Ranch Co., 128 U. S., 383, in which the following instruction was held properly given:

"If the jury find that Stuart (vendor) purposely kept silent when he should have spoken and informed Clay (vendee) of material facts, or find that by any

language or acts he intentionally misled Clay about the number of cattle in herd or the number of calves branded in 1882, or by any acts or expressions, or by silence consciously misled or deceived Clay, or permitted him to be misled or deceived, then the jury will be justified in finding that Stuart made material misrepresentations and must find for the plaintiff."

See cases cited in above case.

See also Smith *vs.* Richards, 13 Peter (U. S.) 26.

"*It (misrepresentation) may consist of conduct alone or external acts when through this means it is intended to convey the impression or produce the conviction that some facts exist and such result is a natural consequence.*"

Pomeroy Eqt. Sec. 877.

Tyler *vs.* Savage, 143, 77.

"The design will be viewed from the natural and necessary consequences. It is not necessary that all the representations by which a party is induced to act should be true. The cases hold that where certain statements have been made, all in their nature capable, more or less, of leading the party to whom they are addressed to adopt a particular term of conduct and any one of them is untrue, the whole contract or other transaction is considered as having been obtained fraudulently."

Pom. Eqt., 880.

"A man to whom a representation is made has a right to rely upon it and need not make further inquiry."

Kerr on Frauds and M., 80, 81.
Lowe *vs.* Truesdal, 78 Va., 68.
Mead *vs.* Bunn, 32 N. Y., 275.
David *vs.* Park, 103 Mass., 501.

"The fact that he has the means of knowing or obtaining information of the truth, which he did not use is not sufficient. It is not indeed enough that he may have been wanting in caution. A man who had

made false representations, by which he has induced another to enter into a transaction, can not turn upon the person he has defrauded and say that he ought to have been more prudent and not to have concluded the representations to be true in the sense which the language used in the prospectus naturally and fairly imports."

Kerr on F. and M., 79 and 80.

"The effect of what would be otherwise noticed may be destroyed, not only by actual misrepresentations, but by anything calculated to deceive or even to lull suspicion upon a particular point."

Kerr on F. and M., 81.

"The maxim caveat emptor does not apply when there is a positive misrepresentation, essentially material to the subject in question, provided proper diligence be used by the purchaser in the course of the transaction. The rule at least of caveat emptor, where there is a misrepresentation, if applicable at all, must be applied with great care. Nor will a condition in the particulars of a sale, that misdescription or errors in sale, shall not annul the sale, cover a fraudulent misrepresentation."

Kerr on F. and M., 81, 82.

The Appellants Have Not in Any Way Waived Their Rights; the Suit was Filed Within One Month After the Fraud Was Fully Known to Them.

A person upon whom fraud has been practiced has a right to understand all the facts and circumstances and be fully advised of his rights before beginning suit, especially if no rights of third parties have intervened.

Dickson *vs.* Patterson, 160, U. S. 586.

And see especially, Pence *vs.* Langdon, 99 U. S., 578.

The court will see from the conduct of the appellees in relation to this transaction that the above scheme was pre-

mediated and carefully considered with the object to either force the appellants to buy said small piece of land at a large advance, or to force them to sell the property at a sacrifice. The statement that it was purchased with a view of buying the front part of lot 2 upon "**rumors**" that it was to be sold, is ridiculous to say the least.

The appellees contend that the appellants did not use reasonable diligence upon discovery of fraud; certainly if reasonable diligence was not used in this case the limit would be made short indeed, for it clearly appears that the suit was filed in less than one week after the parties were fully advised. The case of Pence *vs.* Langdon, 99 U. S., 578, is especially applicable to this state of facts.

Shappirio says he did not know the exact state of affairs until he discovered the fence after Goldberg moved out, May 6th, and the suit was filed on the 10th day of the same month.

But if it be contended that he knew the condition six months or a year earlier he would have been in time.

> "Reasonable diligence is of course essential to invoke the activity of the court, but what constitutes such diligence depends upon the facts of the particular case.
>
> "When a party injured by fraud is in ignorance of its existence, the duty to commence proceedings arises only upon discovery and mere submission to an injury after the act inflicting it is completed, can not, in the absence of other circumstances take away the right of action."
>
> Kilborne *vs.* Sunderland, 130 U. S., 505.
> Kerr on Fraud & M., 305.
> Pence *vs.* Langdon, *supra.*
>
> "A party is entitled to wait a reasonable time after the discovery of a fraud before bringing suit to rescind."
>
> Gallinger *vs.* Newell, 9 Ind., 572.
> Tyler *vs.* Savage, 143 U. S., 77.

The above Indiana case was referred to in the case of Nesbett *vs.* McFarland, 92 U. S., 101, where the Court said:

> **"The party is not bound to rescind until the elapse of a reasonable time after discovering the fraud, and hence can not be placed in statu quo.**
>
> **"Parties engaged in a fraudulent attempt to obtain a neighbor's property are not the objects of special solicitude of the courts.**
>
> **"If they are caught in their own toils they are themselves the sufferers, it is a legitimate consequence of their violation of the rules of law and morality. Those who violate these laws must suffer the penalty."**

See, also, Morston *vs.* Simpson, 54 Cal., 190, where the Court held that suit brought six months after discovery of fraud was ample time.

Richold was Goldberg's agent, he being employed by him.

Story on Agency, 9th Ed., 31.

The Title Being in Mrs. Goldberg Makes no Difference Even if She Were Not a Party to the Fraud.

> "It is no objection to specify enforcement of a contract to convey land that the legal title is not held by a party to the contract, where such a person is party to the suit and it appears that he holds the title in trust for the vendor."
>
> McDonald *vs.* Youngblood, 46 Fed. Rep., 45.

But Mrs. Goldberg was a party to this contract, for she signed the paper authorizing the agent to sell.

> "Where one who agrees to sell certain land receives the full consideration therefor and then fraudulently gave a deed conveying only part of the land a specific enforcement of the contract may be had in equity even though the contract be oral."
>
> McDonald *vs.* Youngblood, *supra.*

"Where the parties stand upon the land they are bargaining for and examine same, and it is marked by fences five feet high and other monuments; and a deed is made conveying more than the land inclosed and viewed, even if both parties mutually understood and believed the property described in the deed is a correct description, the court will require the grantee to reconvey so such or such part as was not within the inclosed lines."

Good *vs.* Rieley, 153 Mass., 585.

A fortiori when the one who made the deed knew at the time he was practicing a fraud and not giving what the purchaser supposed he was buying.

The appllees pretended below that Shappirio had exercised ownership over the property to such an extent he had waived his right as aforesaid, and one of the grounds for this is the statement of the witness Galloway, that he had made certain repairs. The Court will see that nothing was done but to clear out the store and do a small amount of papering.

"I sent the man down there to do repairs in the way of papering and things of that kind, that is the way I discovered the fence" (Rec., pp. 92, 93).

This is the only intimation that any repairs were made after Goldberg moved out, and this was when the workmen were sent to make such repairs and discovered the fence.

Besides, these small improvements were a benefit to the property and the appellees have no right to complain about this and contend that they cannot be placed in *statu quo*.

Neblett *vs.* McFarland, *supra*.

It was said in Coffee *vs.* Ruffin, 4 Cald. (Tenn.), 487.

"That the rule that a contract cannot be rescinded unless the parties can be placed in *statu quo* does not

apply where one party has obtained advantage over the other by means of fraud, and such rescission would further the ends of justice, and the court can still reach and enforce equities between them; or if fraud or the act of the parties prevent such placing in *statu quo.*"

"Likewise, where a party who wishes to rescind a contract restores or offers to restore what he has received under the contract without unreasonable delay, the fact that the other party by his default renders full restoration impossible will not defeat the former's right to rescind."

Hammond *vs.* Pennock, 61 N. Y., 145.

A party practicing a fraud may be required by bill in equity to do what he agreed to do. If he cannot, the contract will be rescinded.

Kerr on Frauds and M., 333.

The appellees contend that by the evidence of said Galloway it is shown that changes were made in the property, and they take this from what is said on page 89 of the Record. But the evidence there did not relate to this property. If such were the case it could have been fully established by the witness on further cross-examination. The attorney for the appellees knew that if he had asked the specific questions, what had been done, it would have been shown that what was done was only to clear out the place and patch up the paper which amounted to a few dollars. If such a change was made in the property it is incumbent upon the party practicing the fraud to show it. His attorney could not do so and only left the record in this way hoping to draw an inference from such statement that some great change had taken place.

"Where the conduct of the defendants has not been such as to commend them to the favor of the court of equity, any doubt and difficulty should be resolved against them."

Providence Rubber Co. *vs.* Goodyear Rubber Co., 9 Wall., U. S., 788.

The evidence shows that the appellees have made false statements: First, about the building of the stable; second, about the occupancy of the yard and stable; third, about the fact of Goldberg having said to Shappirio that the small piece of land and stable did not belong to him; and fourth, about the corroborative evidence in relation to the animals not being about the premises, at the time of the negotiation of the sale; and fifth, about Mrs. Goldberg having paid for the small piece of land with her own funds: **Each and every one of which was absolutely false. Some admitted so and others proven so beyond doubt.**

The decree below should be reversed and the case remanded with directions to enter a decree for the enforcement of the contract as originally made. If not the contract should be rescinded as prayed in the alternative.

The following authorities, among others, are cited in the brief and principally relied upon in support of appellant's contention:

For what constitutes fraud and misrepresentation, see:

Crosby *vs.* Buchanan, 23 Wall., 454.
Stewart *vs.* Cattle Ranch Co., 128 U. S., 383.
Tyler *vs.* Savage, 143 U. S., 77.
Smith *vs.* Richards, 13 Pet., 26.
Henderson *vs.* Henshaw, 54 Fed. Rep., 320.
Kerr on Fraud and Mistake, 81, 101.
Pomeroy Eqt., Sec. 877, 880.
Good *vs.* Riely, 153 Mass., 585.

On question as to what time action should be begun, see:

Dickerson *vs.* Patterson, 160 U. S., 586.
Pence *vs.* Langdon, 99 U. S., 578.
Kilborn *vs.* Sunderland, 130 U. S., 505.
Kerr on Fraud and Mistake, 305.
Nesbit *vs.* McFarland, 92 U. S., 77.
Tyler *vs.* Savage, 143 U. S., 77.
Gallinger *vs.* Newell, 9 Ind., 572.
Morston *vs.* Simpson, 54 Cal., 190.

Respectfully submitted,

LEO SIMMONS,
For Appellants.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 87.

MARY SHAPPIRIO AND JACOB I. SHAPPIRIO,
APPELLANTS,

v.

MINNIE D. GOLDBERG AND GEORGE GOLDBERG,
APPELLEES.

BRIEF FOR APPELLEES.

This is a case in which the appellants seek to get something for nothing, and charge the non-commission of a fraud as a fraud against them. Their statement of the case in their brief will be found to be artificial and suppositious in the details vital to this suit. Many matters which are the subjects of sharp conflicts in the testimony are serenely stated as the appellants claim them to be and as if they were conceded by the appellees. In addition, the assignment of errors is entirely too general.

The bill seeks affirmance and rescission of a sale of realty. Inconsistency is not its least novelty. The bill and testimony taken to support it present a unique paradox.

Jacob I. Shappirio sues only as the husband of Mary (R., p. 1). The bill alleges that *she*, through him, agreed to pur-

chase from George Goldberg part of lot 28 *and part of lot 2*, in square 977; that Jacob, acting as *her* agent, was *told* by Goldberg that the entire yard inclosed and the barns then in the use and possession of him, Goldberg, were parts or parcels of the premises included in the sale; that *she* agreed to purchase said property as the same was pointed out and described to her husband, acting as her agent, at the price of $6,000; that Goldberg agreed to sell and convey the same to her for that sum; that Goldberg *stated* that the land described—part of lot 28 *and part of lot 2*, in square 977—all belonged to and was a part of the premises; that there was no outward appearance to show differently; that complainants, having full faith and confidence in Goldberg, *relied upon such representations;* that the entire transaction in relation to transferring the property was left to one Richold, *the agent of Goldberg;* that neither of the complainants was familiar with nor posted upon such matters, and *relied solely upon such representations;* that Goldberg knew at the time that he did not own the record or legal title to any part of said lot 2 (R., p. 2); that, although Goldberg had agreed to sell said pieces or parcels of land and premises to said Mary, he only conveyed to her the part of lot 28; that her deed from Goldberg was not examined by her or Jacob before paying for the property, because, having full faith and confidence in Goldberg, *and relying upon said representations*, they did not deem it necessary to do so; that *Goldberg*, while occupying the property as tenant of Mary, purchased the record or legal title to said part of lot 2 and caused it to be conveyed to his wife Minnie; that he paid $250 for it from *his own means* (R., p. 3); that Minnie has no interest in it but to hold it for him to aid him in carrying out his alleged fraudulent scheme; that he paid for it more than thrice its market value and purchased it only for his alleged fraudulent purpose, and that *Mary* did not intend to purchase only the property conveyed to her, and would not have purchased nor paid for the same except upon

the *supposition* that she was buying the *two* pieces or parcels of land as shown and pointed out to *her husband* (R., p. 4). The prayers are for process, references, accountings, injunction *pendente lite* (R., p. 4), general relief (R., p. 5), for a declaration by the court that Minnie holds said part of lot 2 *for the use* of Mary, and that the former may be required to convey the same to the latter free and clear of any incumbrance placed upon the same; and in case such relief cannot be granted, for rescission of the sale to *Mary*, refund of the entire purchase-money, of all costs and charges, with interest thereon from the date of such payments, together with a reasonable amount for such other *damages* as she has suffered by reason of the sale, for sale of the property by court trustees, and for a deficiency decree against Goldberg (R., p. 4).

The bill, it will be noted, recites an agreement to sell to *Mary*, and false representations made to *her*. The intended double aspect is really specific performance and rescission, two utterly inconsistent remedies. The fraud charged in the bill is actual and active, *not mere silence*. The alleged false representations of Goldberg were "*relied solely upon*" by Mary, so she avers in the bill (R., p. 2). Proof of any actual fraud other than that alleged, or of any constructive fraud whatever, *or of mere silence*, would be neither responsive to nor sufficient under this bill.

This suit was filed on May 18, 1901 (R., p. 1). The date of the agreement for sale is alleged as May 11, 1900 (R., p. 2). The deed to Mary was made by Goldberg on June 5, 1900 (R., pp. 49, 50). The deed to Minnie was made by Darby on September 28, 1900 (R., p. 152).

The defendants answered fully, denying all of the allegations of fraud and the other matters essential to relief (R., pp. 5–11). They say that they *did not know Mary* in connection with the property involved until about the time when they executed their deed to her, on June 5, 1900. Before that time *they knew only Jacob* in the matter of the sale of the

property. *They deny that any part of the property sold or agreed to be sold to Jacob consisted of part of lot* 2. They agreed to sell to him, and sold to him, *only the property described in their said deed of June* 5, 1900, *to Mary.* This deed was prepared *by her own expert agents* after examination by them of the title and plat of Goldberg's property, which consisted only of the south 34 feet front of lot 28, in square 977. The complainants were well aware on June 5, 1900, that Goldberg did not own any part of lot 2 (R., p. 6). The description given in the deed to Mary shows a piece of land of a shape and of dimensions so utterly inconsistent with the property as described and claimed by the complainants in their bill that it is impossible that they could have honestly thought or believed that any part of lot 2 was either included or intended to be included in the land which Goldberg agreed to sell or sold. One who runs may read (R., pp. 6, 7). Every allegation of fraud or false representation made in the bill is unequivocally met and fully denied by the answer. Richold was also Shappirio's agent in the sale. There was only one stable or shed on lot 28. Goldberg never told Jacob that the premises included two stables, but did tell him, *through his agent, Richold,* that he did not own the stable on lot 2, nor the land on which it stood, and that the agreement of sale did not and could not include any part of lot 2. Shappirio did not purchase in reliance upon any representations of Goldberg, but had the title and plat fully examined and the deed prepared by experts employed by him (R., p. 7). Complainants' failure to read their deed is immaterial. Their own agents prepared it and supervised its execution; likewise a deed of trust from them. They are chargeable with the knowledge of their agents. They could read, and were not prevented from reading the deeds. Goldberg did not buy part of lot 2, but Minnie did, from her own separate money, earned by her before she married Goldberg. She paid 50 cents per square foot for it. Goldberg has no interest in it (R., p. 8). Shappirio offered to resell to Goldberg the property con-

veyed to Mary, *at an advance*, but the offer was declined. Respondents occupied the premises covered by the deed of June 5, 1900, to Mary, as tenants for nearly one year after the sale, paying $50 per month rent. They moved out only because Shappirio refused to reduce the rent. Minnie, and not Goldberg, put the fence around the part of lot 2 which she had bought from Darby. This fence does not prevent the use of the kitchen of No. 1247. It cuts off lot 2 from lot 28. Shappirio never had title or possession of lot 2. Goldberg did not erect the stable on lot 2, but a former owner of that lot did. Minnie does not hold said part of lot 2 for Goldberg, nor for any purpose of his (R., p. 9). Goldberg never pointed out to Jacob any part of lot 2 as constituting a part of the premises agreed to be sold, but, on the contrary, Goldberg distinctly told Jacob, *through his agent, Richold*, when the agreement for sale was made, that said part of lot 2, with the stable or shed in the rear of No. 1247, did not belong to him, Goldberg, and was not to be included in the agreement. The complainants have no right whatever to said part of lot 2. It belongs solely to Minnie as her separate estate. The defendants had been in possession of the shed on lot 2 for several years, under an agreement with the owner thereof. They used it for storage purposes. In the fall of 1900 they heard that lot 2—the front part—was to be sold. In order to retain the rear part and shed, Minnie concluded to buy it, and did so. Her purchase had nothing whatever to do with Mary Shappirio or her property. Minnie had nothing whatever to do with the transaction between Goldberg and Shappirio, except to sign the necessary papers solely as Goldberg's wife. When the agreement for sale was made, lot 28 was subject to a deed of trust, made some years before by Goldberg, to secure a certain obligation, on which about $3,425.99 was then unpaid. This amount was paid from the Shappirio purchase-money, and the trust was released on June 5, 1900, to Smith and Norment, as trustees, under a new deed of

trust of the property, of June 5, 1900, from the complainants to them. It is now impossible to replace the parties in *statu quo*. The prayers C and D of the bill are utterly inconsistent with each other, and prayer D is inconsistent in itself, and, in the greater part, beyond the power and jurisdiction of a court of equity (R., p. 10). The deed of trust of June 5, 1900, from the complainants to Smith and Norment (R., 218), conveyed only the identical part of lot 28 described in and conveyed by Goldberg's deed to Mary of the same date, and it secured a loan of $4,500 for three years at 5 per cent., then made by Mrs. Clark to complainants (R., p. 11). Manifestly the part of lot 28 conveyed by Goldberg to Mary was taken and accepted in the open money market as good security for a cash loan of $4,500, for a considerable length of time and at a low rate of interest. One would therefore infer, in this city, that the property was worth considerably more than $6,000—the sum for which Goldberg sold to Shappirio.

There is no charge in the bill that Minnie made any false or fraudulent representations to Jacob or Mary in regard to the sale. She had nothing whatever to do with that sale, except only as Goldberg's wife. She did not buy the part of lot 2 until nearly three months after that sale had been entirely closed. How the complainants can reach her part of lot 2, under the pleadings and proofs, I am wholly at a loss to perceive; and how they can have rescission in this case one cannot possibly conceive without first utterly forgetting all of the germane principles of equity power, pleading, practice, and evidence. Even an offer to restore the property to Goldberg, as a predicate of rescission, is wholly omitted. Indeed, the bill seems to negative any intent or willingness to restore. There is no allegation of the respondents' insolvency. The facts alleged, coupled with the startling prayer D, make a case for a court of law, if for any court at all.

Of the evidence, it may be premised that the greater part

of that offered by complainants was totally irrelevant, while the cross-examination of the respondents' witnesses evidenced only a prodigious desire to learn how much they knew about matters wholly foreign to this case. The cross-examination of the respondents—the details of which you are spared by a digest thereof (R., pp. 201–224)—was a masterpiece of irrelevancy and foreign phantom-chasing. The complainants' case closed reminds one of the Comprachicos or Cheylas, and of Racine's saying, "*Et que meconnaitrait l'œil méme de son père*"—in bad French.

Of the plats filed with the bill (R., p. 4) and answer (R., p. 10), it may be said that they clearly show the *dis*connection between lots 2 and 28. The same may also be said of the other plats in the record (R., pp. 51, 153), and also of the plat annexed to the certificate of title issued by the Real Estate Title Insurance Co. to Shappirio in closing the sale of Goldberg to Shappirio, and the Shappirio deed of trust to Smith and Norment.

MOTION TO DISMISS.

1. This appeal should be dismissed for want of jurisdiction, because the amount in controversy is only $1,500.

The entire value of the property is only $6,000 (R., pp. 2, 7, 12, 48, etc.). It is subject to appellants' deed of trust for $4,500 (R., p. 10). This is conceded by appellants (R., pp. 11, 12). The beneficiary and trustees under this deed of trust are not parties to this suit, and their $4,500 interest is not part of the sum in controversy between those who are parties. The appellants' collateral liability on their deed of trust cannot be considered. The actual value of the thing in controversy or the actual amount in dispute is, therefore, only $1,500, for this is the full extent of the appellants' interest in the property.

2. This appeal should be dismissed for want of necessary parties.

This objection was manifestly reserved in paragraph 12 (R., p. 10) of appellees' answer to the bill. The stipulation (R., pp. 11, 12) cannot operate to render rescission possible without having before the court the other parties to the former and present deeds of trust. Apart from the question of jurisdiction, the appellees stand fully by the stipulation.

ON THE MERITS.

The appellees rest upon two main contentions, which are as follows:

1. Upon complainants' own showing, by the pleadings and testimony, they have not made out any case for relief, *as a matter of law.*

2. Upon the whole record, complainants have not made out any case for relief, *as a matter of fact.*

Under these two heads I shall discuss the case as the record presents it to my mind.

Mary Shappirio had nothing whatever to do with the purchase from Goldberg, and knew nothing whatever about it, except what her husband, Jacob, told her. She did not examine any of the papers in relation to it. She was in the Real Estate Title Insurance Company office when she signed the deed of trust. Jacob told her that he would buy the property *for her* for the protection of herself and children (R., p. 13).

The conclusions from this testimony are that *she* did not agree to purchase from Goldberg premises numbers 1245 and 1247 Eleventh street southeast; that Jacob was *not* her agent; that *she* was told nothing by Goldberg, either personally or through her husband, as her agent; that nothing was pointed out by Goldberg to her, either personally or through her husband as her agent; that she did not rely

solely or at all upon any representations made by Goldberg, and that Goldberg did not agree to sell the land to her. Her testimony shows a state of facts directly antagonistic to the sworn allegations of the bill, especially those of paragraphs 3–6 and 11 thereof (R., pp. 2, 3, 4). It is very clear that she was a stranger to Goldberg in the sale—a mere assignee of her husband's own purchase. Jacob, not Mary, contracted with Goldberg. He contracted on his own, not her, account. Neither Goldberg nor his wife knew Mary Shappirio in the sale until they closed it on June 5, 1900 (R., pp. 6, 202, 214). They merely made their deed as Jacob desired. Surely, nothing can be found in the record to show that Goldberg either said or did, or omitted to say or do, anything with the knowledge, information, belief, intention, or suspicion on his part that it was to be communicated to a third party—Mary Shappirio—and acted or relied upon by her. When the authority of Goldberg to Richold to sell, of May 11, 1900, was signed (R., p. 48), Richold informed Goldberg that *Jacob* I. Shappirio was the purchaser (R., p. 60). The deposit receipt of May 11, 1900, given by Richold (R., p. 12), specifically recites *Jacob* I. Shappirio as the purchaser, and is signed by "*Jacob I. Shappirio, purchaser.*"

It follows that Mary Shappirio cannot claim relief upon any alleged false and fraudulent representations not made directly or indirectly to her, nor intended for her eye or intellect. She is the principal complainant; Jacob sues only as her husband (R., p. 1). Indeed, he is both an unnecessary and improper party to the bill. It is only the usual case of a husband buying property and having it deeded to his wife as a gift—or otherwise. Jacob was not her agent in any such sense that she can avail herself, by way of rescission, of any alleged false representations made by Goldberg to Jacob; nor can she claim relief by way of specific performance of the contract between Goldberg and Jacob (R., p. 12), to which she was not a party. Being a

stranger both to the alleged false representations and the contract, they can avail her nothing. So far as this case is concerned, it seems clear from the evidence that Goldberg was the vendor and Jacob the vendee. But Jacob does not sue for the relief prayed. Mary alone claims such relief.

"It is settled law that a fraud on one person is no ground for redress or relief on behalf of a stranger to the transaction. * * * It is a general rule that a person cannot complain of false representations, either for the purpose of maintaining an action for deceit, *or for the purpose of avoiding a contract*, unless the representations were made either directly to him, with the intention that they should be acted upon by him, or, if made to some other person, unless they were made *with the intention that they should be communicated to him, and acted upon by him.*"

14 A. & E. Ency. Law, sec. ed., 148.

Of course, false representations made to an agent may be availed of by the principal. Here the bill charges that the alleged false representations were made to Jacob, the husband, as agent for Mary, but the proof wholly negatives such relation of principal and agent between her and him. It establishes only the relation of donor and donee. As regards Goldberg, Mary stands in the same position as if the deed had run to Jacob and he had thereafter conveyed to his wife Mary.

It seems clear, from the evidence, that until the paper of May 11, 1900, was signed (R., p. 48), Richold was only Jacob's agent, and not Goldberg's. Richold says that on May 11, 1900, he offered Goldberg $6,000 for the property in behalf of Jacob, and Goldberg accepted it (R., pp. 13, 14). Jacob was the only customer. He and Richold together *looked at the property* before May 11, 1900 (R., p. 14). Richold alone attended to the closing of the sale for Shappirio (R., p. 15). That Richold was Shappirio's agent is also clearly shown by the former's cross-examination (R., pp. 60–72). About one month or six weeks before Richold mentioned the Goldberg

property to Shappirio, the latter met Richold and told him to let him (Shappirio) know of any good investment which he (Richold) "ever came across" (R., p. 74). Jacob further testified as follows: "I told him (Richold) to look out and see if he saw anything that was a good investment. * * * He (Richold) *afterwards* came around and told me that Mr. Goldberg would sell, but would not trade" (R., p. 74). There is a great deal more testimony in the record tending to show that Richold was Shappirio's sole agent before May 11, 1900; between that date and June 5, 1900, when the sale was closed; and after the sale, at least until May, 1901, when Goldberg moved out of the premises.

The paper of May 11, 1900, describes the property as "No. 1245 and 1247 11th St., S. E. * * * square 977, *part of lot 28;* 34 feet front by 80, to alley, with improvements" (R., p. 48). It is wholly silent as to *part of lot 2.* Lot 28—Goldberg's part—*did* front 34 feet, and part of it *did* run back 80 feet, and 8 inches more, to an alley (R., p. 10).

Richold further testified: *Before May 11, 1900, Mr. Shappirio had looked at the property with me* on a Sunday morning. We went upstairs *and all around* in both houses and looked at all the rooms, and then we went out in the yard, and I left Shappirio and Goldberg talking together and looking over the property in the yard of 1247. *Goldberg did not state to me at any time that the stable in the rear of 1247 belonged to the property.* I only asked him what was the size of the lot in the front and rear, with the improvements thereon. I *thought* he sold the whole business. *That was my idea.* I *thought* it was all in there what was there. *Jacob* paid the money for the property. *I* fixed it up in Ashford's office. *Jacob* paid $100 deposit before the deeds were made. After the deposit was made Jacob *authorized me to order the deed and attend to the whole business, and I did so.* I ordered the examination of the title and attended to the whole business. After that I collected rents from Goldberg for the property for about a year he was in it. After

five or six months after the sale I learned that the ground upon which the stable of 1247 stood and the back yard to that house were not included in the sale. Goldberg told me that ground did not belong to Shappirio; that we could *look at our deed* (R., pp. *14, 15*). Shappirio had nobody on earth as his agent but myself in the matter. He authorized me to offer Goldberg $6,000. Shappirio had nobody but me as his agent. Nobody knew anything about it but me. I gave it to the title company to examine the title and attend to the whole business right after Shappirio gave me the deposit. Shappirio left it all to me. He did not bother about it at all (R., pp. 60, 61).

Particular attention is invited to the cross-examination of Richold—the complainants' star witness—and to the manifest conclusions therefrom (R., pp. 60–72).

Jacob I. Shappirio, the complainants' most important witness next to Richold, testified, over a fatal objection to his competency, as follows: I told Richold to offer Goldberg $6,000 for the property. I examined the property with Galloway. I had seen it before with Richold. *Goldberg did not say to me that this piece of property on which the stable of 1247 is located was all a part of this property. He never said anything of the kind.* I had no reason to ask him. I left the examination of the papers or title to the property to Richold because I was occupied in business and did not have the proper time to attend to it, and I thought I had better give it to a man who is more able to attend to it than I was, *and I depended solely on Richold.* I knew Goldberg for several years. I did not have any reason to believe that he would defraud me in any way or tell me an untruth (R., pp. 16, 17). *I relied on Richold* because he knew how to attend to it. I gave him the control of it. *I first learned that the ground in the rear of 1247 was not included in the sale about the last part of September or the first part of October, 1900.* Richold did not come near me for a couple of months after he found out that that piece of

ground, as Goldberg stated, did not belong to me, and it was not included in the sale. *Some time in October, 1900, Richold told me that Goldberg said the rear ground and the stable of 1247 were not in the sale.* I told Richold to tell Goldberg that I did not buy the property to lose anything on it. *I bought it to make,* and if, at any time, he wants me to sell, *and will pay me a profit,* I will sell it to him (R., pp. 18, 19). Another time I sent Goldberg the same answer by Richold, when Goldberg sent Curran to Richold to ask whether I would sell the property. Goldberg vacated the premises about May 6, 1901—eleven months after the sale was closed and one year after the contract was made. *I have since tried to rent the property and gave it to an agent. As soon as I heard that the rear ground was not in my deed and did not belong to me, I went to find out whether it belonged to me or not. I went over to the District building about it, and, in fact, I asked somebody to inquire for me.* I did not have the time to do it. Before Goldberg moved he asked me personally to reduce the rent. I refused (R., pp. 19, 20). I am a merchant tailor on Eleventh street N. W., and have a place where I sell general merchandise at 905 D street N. W. I have been in business on my own account since 1889. I own 412 Spruce street. I bought it in May, 1899. I examined Goldberg's property with Richold on a Sunday before the sale. *I had previously told Richold to let me know of any good investments.* That was about a month or six weeks before. In 1884 *I worked* for Cohen, who then kept store *in 1247.* I worked as his salesman for several months, *and lived in the house* (R., pp. 73, 74). 1245 was then a garden lot. There was a back window in 1247. I cannot tell whether there then was a yard, stable, or bank of dirt in the rear of 1247 (R., p. 75). Possibly *Goldberg did not say whether the stable did or did not belong to him. He might as well have said it* (R., pp. 79, 80). Goldberg told Ike to "show him (Shappirio) through *the stable.*" I took it, from what Goldberg *said to Ike,*

that the stable in the rear of 1247 was a part of the property. Goldberg never said one word out of the way about the ownership of that stable. I never made any specific inquiry whether it did or did not belong to him. I would not think a man would offer to sell me anything that did not belong to him. (Part of lot 2 did not belong to Goldberg.) Goldberg did not point out anything in particular. He did not specify any particular part (R., p. 80). I did not ask Goldberg whether the stable in the rear of 1247 belonged to him or not. I did not ask him anything. I did not think a man would sell me what did not belong to him. Richold had the title examined *to find if Goldberg owned the lot.* The deed to my wife was drawn by the title company. I paid the title company. I got Richold to attend to this matter for me (R., pp. 81, 82). *I depended solely on Richold.* I wanted him to look out for my interest. It was simply a matter of confidence. That is why I got Richold. Goldberg never spoke to me in regard to the dimensions of the lot or anything of that kind. I learned the dimensions from the contract—34 by 80. I cannot tell whether the certificate of title was delivered to *me with the deed* or whether the mortgagee has it (R., p. 83). For my part, it could have been drawn up by anybody. *Of course, before Goldberg moved I heard that the rear ground did not belong to me. I heard of it about the first of October, 1900. I then inquired. I consulted Bigelow & Bigelow, lawyers, to investigate it. They investigated it for me* and found out that Goldberg bought that lot in his wife's name (R., pp. 84, 85). Richold did not tell me in October, 1900, that the stable did not belong to me until after I spoke to him. It must have been two or three months after Goldberg told him that he told me. He was afraid to come around. He kept away. He told me that strip of ground was not included in the sale. It must have been late in November or early in December that he told me that. It might have been October (R., p. 85). When I went to the District build-

ing to investigate whether this strip of ground belonged to me or Goldberg, I learned (*in October, 1900*) that part of lot 28 was only one lot, and ran 62 feet and 8 inches, according to the plat. That is what they told me (R., p. 86). (The lot has a depth of 80 feet and 8 inches on the north line and 62 feet and 8 inches on the south line, with a frontage of 34 feet, running back in part to a 30-foot alley. See plat, R., p. 10.) *I went there in one of the fall months.* I thought maybe Goldberg bought this strip for me. *Goldberg said the ground did not belong to me and was not included in the sale.* After the sale Goldberg never stated to me (personally) whether the rear strip did or did not belong to me. I went down and saw him while he was my tenant. I might have seen him two or three times, but I never spoke to him in regard to the situation or anything else, and he never informed me of anything. *I never had any talk with him about the ownership of the stable.* After I saw the fence there I did not see him, but a lawyer. After Goldberg moved out *I bought some shelving from him in the stores.* This was a week or ten days before he moved out (R., p. 87.) I did not then say anything to him about what I had heard about the rear ground, and he did not say anything to me about it. I would have purchased this property merely upon the representations of Goldberg and Richold without having had the plat and title examined and certified, because I knew Goldberg for many years to be a perfectly honest man. (But Shappirio was quite careful to employ and rely upon the title company *and not on Goldberg.*) *I have lately* (September 4, 1901) *tried to rent these houses* (R., p. 88).

I also invite attention to the entire testimony of Richold and Jacob Shappirio (R., pp. 13–16, 16–21, 59–72, 72–89, etc.), the complainants' principal witnesses, for the purpose of drawing attention to the utter failure to prove the allegations of the bill or such a condition of facts as would justify any relief in equity.

The following also appears in Richold's testimony:

When the paper of May 11, 1900, was signed I had an offer from Shappirio of $6,000 for the property, and so told Goldberg. On the same day, *in behalf of Shappirio*, I offered Goldberg this sum, and he accepted it. *Shappirio had nobody on earth as his agent in the matter but myself.* He certainly authorized me to offer Goldberg $6,000. Shappirio had nobody but me as his agent in the matter. Nobody knew anything about it but me. I gave it to the title company to examine the title and attend to the whole business right after Shappirio gave me the deposit. *Shappirio left it all to me. He did not bother with it at all. I* drew up the paper of May 11, 1900, on Goldberg's counter. He told me the number of *the lot* and square. He said *the lot* was 34 by 80, with the improvements. I have never since inquired what the correct dimensions were. I took it to Ashford to examine, and there we closed it up. I *thought* Goldberg sold me 34 by 80, with the improvements. I have been in the real-estate business 12 or 14 years, and have had a great many transactions in buying and selling real estate in this District. I did not look at the plat books in this case. I never looked at the plat of this property at all and have not since this suit was filed. I never knew the yard was not included until *six months after* the sale. (Herein he contradicts Shappirio.) I never investigated it. I thought *Goldberg an honest man and think so to this day* (September 4, 1901). I have always known him to be so as long as I have known him—thirty or thirty-five years. I call him an *honest man and certainly do think he is an honest man. If* there was a trick in this matter I did not know it. I certainly decline to explain what I mean by trick. About *six months* after the sale I found out that the ground in the rear of 1247 was not included in the sale. I gave Shappirio a receipt for the $100 deposit. (See this receipt, R., p. 12.) I did not turn over the deposit to Goldberg. *Shappirio authorized me* to attend to the examination of the title and the closing up of the transaction.

He left it all to me. He did nothing. I certainly attended to it all. I made the loan (the $4,500 Shappirio loan secured by deed of trust to Smith and Norment), and fixed it up, and gave Ashford the instructions. I gave the order to the title company to examine the title. Shappirio told me to do it, and go ahead and *represent him.* I took him down and introduced him to Norment. I did not bother with lawyers. I gave the order to examine the title in my own name. (This order was dated May 28, 1900, directed to the Real Estate Title Ins. Co.; authorized that company to prepare a certificate for 34 feet front of *lot 28*, in square 977, and stated that this property was owned by Goldberg (R., p. 64). (See also R., pp. 208, 201, 218.) It bears my signature. (*It is silent as to part of lot 2.*) I attended to the whole business. Goldberg gave me the property as 34 by 80 to a 30-foot alley. (See plat, R., p. 10. Lines are 34 by 80.8 on north part to a 30-foot alley.) It was subject to a mortgage of $3,500. I *simply took it for granted* that Goldberg sold to Shappirio *other property* than the 34 feet front of lot 28 in square 977. I certainly so understood him. (The contract (R., p. 12) and authority to sell (R., p. 48) contradict this.) I *simply took it for granted* that the stable back of 1247 was included. I *thought* the whole thing ran back. I *simply took it for granted* that the stable back of 1247 was a part of lot 28. I did not look into it any further. I will certainly take your word—what you tell me—in buying property. In buying property I take a man's word a great deal as to its dimensions and title—his mere say-so—and *not* upon an examination of the plat and title. I would take it all my life; anybody would. I would take it without any examination of the plat. (A remarkable real-estate agent!) Who shall I employ but the title company to examine the title? *I have to have somebody.* (Surely, Goldberg's alleged representations were not relied upon!) I could not examine it. *The sale would not have gone through without an examination of the title.* I don't sell property *unless the title is examined*

and is good. I *always* get an examiner to run down the title. They put the *tax certificate* in it. I never look at the plat or title, nor do I employ people to do it. I always have it examined. (What a witness!) There might be a tax title. I collected rent of this property since Goldberg was in it. *I acted solely as Shappirio's agent.* He gave me the renting. Goldberg always paid the rent. About *five* or six months afterwards I first learned that the property in the rear of 1247 did not belong to Goldberg and had not been conveyed to Shappirio. *I did not do anything then.* I did not tell Shappirio. Goldberg always paid the rent in the store. After I learned about the rear ground I collected the rents from Goldberg until he moved out (about May 6, 1901). During all that time I never said a word about it to Shappirio or Goldberg. Goldberg treated me like a gentleman. I *decline to answer whether I was a licensed real-estate broker at the time of this transaction. Shappirio came to me* and told me that the rear strip did not belong to Goldberg. I did not tell Shappirio. *He came to me.* I *took it for granted* that 1245 and 1247, 34 by 80, included the whole property. *I never asked Goldberg* about the house or *stable or yard.* I *took it for granted* that all that belonged to the whole business belonged to what I sold to *my* client. In this case I *took it for granted* that the 34 by 80 meant a rectangular piece of ground, and included *everything* in the rear. *I never asked Goldberg about the stable* or the front house or anything else. Everything that belongs to the property *I took it* (for granted). *Goldberg did not say anything about the stable.* I never examined the ground, 34 by 80, and don't know whether it runs to an alley or anything about it. I don't ask whether this or that belongs to it. You sell me *all you have* and that is the end of it. Goldberg said he would sell *me* 34 by 80, with the improvements up to the alley. I did not write the rest of the order to examine the title—only my signature. I *don't remember* who gave the title company the information as to the lot

and square and name of the owner and frontage of the lot that appears on that order. *I certainly did give it to the company* (R., pp. 60–72).

Darby testified that he would not have sold the *part of lot 2* for less than $300; that he would have asked more than $300 for it; that this ground was never offered for sale; that it was considered *peculiarly valuable* because it was the back of the lot and a *key* to the whole, or necessary to belong to the property (R., pp. 21, 22, 54–56).

Nalley testified that Gates sold *the privilege* of the strip of ground in the rear of 1247 to Goldberg; that he does not know who paid for the stable; that Selby built it on top of a fence already around the strip; that he (Nalley) learned about 6 or 8 months after August, 1894, that the stable and lot in the rear of 1247 did not belong to Goldberg; that he never talked with Goldberg about the ownership of the stable and that piece of ground; that Gates told him (Nalley) that that little piece of ground did not belong to 1247, but was a part of lot 2; that Gates did not say that Goldberg owned it, but said that he sold Goldberg the privilege of it—the right he (Gates) had in it. (Gates' right was mere possession, of a few years' standing, without any title or right of possession whatever—R., pp. 22–24, 56–59.)

Galloway testified: I am familiar with the property. I have been there several times; I did all of Shappirio's work. The *first* time I went down *with Shappirio* to look at the property, *and to see what repairs were to be made.* If I had any work to do there, I wanted to know what I had to do. Goldberg's *brother-in-law* (Ike Roginski) *practically* told Shappirio that the stables belonged to the property. *I have made some repairs there since Goldberg vacated* (about May 6, 1901). I have worked for Shappirio for about three years. I have made repairs and done remodeling for him in various houses and stores. I am now doing about $2,000 worth of remodeling for him. "I * * * remodeled the house on 11th street southeast * * * " (R., 89). I have

done all of his work since I have known him. I did all of the work of tinning, painting, and plastering, and all kinds of work that goes into a building—heating and everything of that kind. I have done nearly $4,000 worth of work for him in the last 12 or 13 months (date of this deposition, September 4, 1901). The areaway and passageway are brick, and not concrete. (They are concrete, and not brick, in fact.) The shutters on the window in the back wall of 1247 cannot be closed *on account of the iron bars. The day Shappirio and I went down to these premises* he told me to look at it *and any part that was necessary to repair to do it.* I looked it over, and told him what I thought was necessary. I went down twice. I went once last year (1900), *but most of the repairs I made six weeks ago* (date of deposition, September 4, 1901). Last year I fixed all of the roofs and chimneys. *This year* (1901) *I overhauled it thoroughly.* I cannot tell the exact time I *first* went down with Shappirio. To the best of my recollection, *it was somewhere about August. It was very warm weather.* At that time I was told (by Shappirio) to make what repairs I thought were then necessary. Jake (Shappirio) said he would not then do anything else unless he got a new tenancy, *which he did this* (1901) *season, painting the place and plastering and everything that was needed.* I made the necessary repairs last year (1900). *About 8 weeks ago* (date of deposition, September 4, 1901) I sent a man down there to do *the other repairs in the way of papering and things of that kind.* When it was occupied I did only extraordinary repairs, *but this* (1901) *season I went through it all inside.* I found the fence *when I went to make the repairs*—that is, when looking at the property *before making the repairs* earlier in the season (1901, *after* Goldberg had moved out about May 6, 1901). When I *first* went with Shappirio to look at the property Jake (Shappirio) asked me to go down there. That is the *first* time I saw it; *after* that time I met Goldberg and Ike Roginski. *I did not hear Goldberg tae anything about whether the stable and property in the rear*

of 1247 did or did not belong to him. He simply said to Ike to show the property. That is all I heard from him. *I don't remember anything positive about it* (R., pp. 26–30, 89–95).

Gates' testimony (R., pp. 30–35) deals with the title, possession, condition, etc., of part of lot 2, but does not touch upon the alleged false representations of Goldberg, which are set up as the *sole* ground for relief by the bill. Gates' evidence is not material to *the* issue. In so far as it is at all relevant, it supports the allegations of the respondents' answer instead of those of the bill. His testimony certainly shows that *when Shappirio worked for Cohen and lived in 1247 he (Shappirio) must have known that the rear ground did not belong to that building or to Goldberg.* His testimony is: I know 1245 and 1247 and lot 2, in square 977. When the alley back of 1247 was cut down a lump of dirt was left there. Afterwards Campbell cut this lump away. My father had possession of all of lot 2, and told me he fenced in this piece after this lump was cut away, and that Goldberg gave him $30 for his right to this piece of the lot. This lump was cut away 7 or 8 years ago. This piece was fenced in the eighties. My father bought lot 2 in 1885 or 1886. He took possession a couple of years afterwards and built a house there. That bank was cut down 6 or 7 years after that. He took possession right after that bank was cut down. When Goldberg built, that bank was there. Goldberg built 4 or 5 years after my father bought lot 2. I don't know who built the stable on the back part of lot 2 (R., pp. 30, 31). My father erected the fence around it and made it a part of the yard of lot 2. He turned over possession of it to Goldberg 3 or 4 years after he owned it. He told me he had sold possession of it to Goldberg for $30. I only know what my father told me. I do not know who built the shed or stable on this ground. I never heard my father or Goldberg speak of that stable. It is very ordinary, a frame building 10 or 12 feet high, looks like a woodshed, and is rickety, too.

My father sold all of lot 2 to Lewis Goldberg, a brother of George Goldberg. I never knew nor heard of Darby owning part of lot 2—never heard of him in connection with it. I never had any talk with Goldberg about this back strip of lot 2. I do not know whether he ever claimed to own it. I don't know anything about Goldberg having sold it (R., pp. 31–35).

Simmons' (B. S.) deposition is only formal, and needs no comment (R., pp. 25, 26).

Simmonds' testimony has been omitted in printing by the appellants.

Kerns' evidence has also been omitted by appellants in printing.

Donohoe's deposition is not only irrelevant, but somewhat foolish in his cross-examination. That the rear strip is a valuable *key* is not denied (R., pp. 36–43).

Aukam's testimony is subject to the same remarks as Donohoe's (R., pp. 43–48).

Simmons' evidence (R., p. 43) is merely formal.

Brady's deposition has been omitted by the appellants in printing.

The foregoing disposes of all of the complainants' oral evidence-in-chief. Of their documentary evidence, the following matters will be noted:

Their plat (R., p. 4) gives no lot numbers, lines, or dimensions; nor does it show the actual, complete *dis*connection between lots 28 and 2, in square 977—a vital matter in this case. It is a mere fanciful sketch, made to order to fit the bill. It certainly fits nothing else—least of all the *actual* facts.

The receipt (R., p. 12) fully supports the respondents' answer. It was called for by them. It is *silent as to lot 2*, but expressly shows Jacob I. Shappirio—*not Mary*—as the purchaser. It bears his signature, but not Goldberg's. "Seller and his agents assume no responsibility for cost of abstract, nor for any damage by reason of said title proving defect-

ive." Thirty (30) days from its date—May 11, 1900—allowed Jacob to close, Goldberg to give a *special* warranty deed; conveyancing at cost of purchaser. *Wherein has Goldberg failed to comply with this contract?*

The Nalley receipts from Goldberg for rent cast no light upon the issues in the case (R., pp. 48, 49, 22, 23).

The application for the permit to construct the shed in the rear of 1247 (R., p. 35) is produced to show that Goldberg built it, because this application bears his signature. The cost of the proposed structure was only $25. Goldberg's signature and his connection with the application and the construction of the shed are fully explained in his deposition in the record. The permit (R., pp. 35, 36) was produced—rather a copy of it—in the same connection and for the same purpose as the application. The word "owner" was in print (R., p. 54).

The authority to Richold (R., p. 48) supports the respondents' answer. *It is silent as to lot 2.*

The deed to the complainant Mary Shappirio from the respondents (R., pp. 49, 50) fully supports their answer. It flatly contradicts the lines given in the bill as the true lines. This deed agrees with the prior writings—the authority to sell (R., p. 48), the receipt (R., p. 12), and the order to examine the title (R., p. 64), as to the true description of the property agreed to be sold. The description in the Shappirio deed of trust to Smith and Norment was the same as that in the deed in fee (R., p. 11), and Jacob I. Shappirio says that he read the deed of trust. "*I examined the trust*, because I had to sign my name to be liable for the indebtedness on it. *I read it over*" (R., p. 19).

It is true that he also says (R., p. 19) that he only read the description of the debt; but of what effect is this fact, even if it be true? Does not the description of the *land* agree *literally* with the agreement to sell, and the other prior writings? Does it not describe and convey part of lot 28, in square 977? Does it not describe and convey 34

feet front by 80 feet and 8 inches to an alley? Why should it have gone beyond all the former writings and have included wholly different property—*part of lot 2?* How could it have included part of lot 2 when, admittedly, neither Goldberg nor his wife, Minnie, then owned it? Does not the fraud charged in this case really consist of an omission to commit a fraud? Are not the respondents really charged only with fraud in *omission* to commit fraud, and not in *commission* of fraud? And does not the *alleged commission* really consist of the *actual omission* to commit a fraud?

The plat (R., p. 51) does not give the length of the north line of lot 28; and it gives the frontage as 32 instead of 34 feet. The alley line should be 14 feet instead of 12, as given.

The chains of title (R., pp. 51–54) give a partial history of lots 28 and 2, in square 977. They certainly show that part of lot 2 was not and could not have been contemplated nor included in the sale to Shappirio.

On January 17, 1901, *after Shappirio fully knew that the strip back of 1247 did not belong to him*—if he really ever did not know it—he wrote Goldberg: "I have fully made up my (not Mary's) mind not to rent 1245 & '47 any other way than I have been renting you heretofore as I think $50 *is very cheap* for the 2 buildings and should you make up your mind to move you will please give me 30 days' notice as per agreement" (R., p. 157). (See also R., pp 104, 105.)

The appellants conceded (R., p. 208) "that Shappirio is (September 11, 1901) *opening a place himself in 1245 and 1247;* that he was *unable to rent* the property, and there was *nothing* for him to do but *to try to put it to some use.*"

As a matter of law, it is submitted that the complainants have utterly failed to show any case either for the relief prayed or any other relief. Their rebuttal evidence in nowise helps them. The fatal testimony lies in their case in

chief. The conclusions from that case appear to me clearly to be in part as follows:

1. If complainants have any remedy at all, it is at law and not in equity.

2. The relief sought both by the bill and testimony upon the two theories of specific performance and rescission is absolutely inconsistent and cannot be granted.

3. Complainants themselves, as well as their agents Richold and the title company, had notice that no part of lot 2 was included in the sale, and the title company certainly knew that the land in the rear of 1247 was not included. The complainants knew in law whatever their agents knew in the course of their business.

4. The complainants' evidence shows conclusively that Goldberg *did not* make the representations charged in the bill nor any false representations whatever. The bill charges actual, active commission of fraud, but the evidence shows only mere silence.

5. The complainants, immediately upon learning of the alleged fraud, should have announced their intention to rescind, and adhered to it, but instead of doing so *they remained silent and continued to treat the property as their own*, and thereby they are held to have waived the objection and to be as conclusively bound by the contract as if the alleged mistake or fraud had not occurred.

6. The proof of the alleged false representations is not of the character or degree required for rescission of the executed contract involved in this case.

7. The complainants had full means of knowledge in the premises. They actually resorted to them. They placed no

reliance whatever upon the alleged false representations. They acted upon their own judgment and the information which they obtained from their agents and third persons.

8. There is no element of mistake charged in the bill, and certainly the proof does not tend to show any, but even if so *mutual* mistake would have to be both alleged and proved to aid complainants; yet the whole case is totally lacking in any *mutual* mistake.

9. The means of knowledge were at hand. They were equally available to both parties. The subject of purchase was fully open to inspection. It was, in fact, fully inspected by complainants. *Jacob even worked and lived in the property before the sale.* Respondents did and said nothing to prevent free action by complainants, and reasonable caution or vigilance would have fully given complainants the knowledge of the alleged want of which they now complain.

10. Goldberg's motive or design, if any he had, can be traced as equally to an honest as to a dishonest source, and so in law the honest motive or design must be preferred.

11. Complainants had ample time for inquiry, examination, and reflection. The contract gave 30 days (R., p. 12). They saw the property some time before the contract was signed.

12. Prayer C of the bill in and of itself is an affirmance of the sale.

13. The burden of proof is upon complainants to establish their case clearly.

14. The written contract cannot be extended by parol to include part of lot 2; nor can a parol contract to include

it be shown, by reason of the statute of frauds; nor can an express trust be shown by parol as to it, for the same reason.

15. There is no offer, either in the pleadings or proofs, to restore the land to respondents. This is absolutely necessary to any rescission in this case.

16. The complainants' equities do not preponderate in this case.

17. There can be no estoppel against the respondents in this suit, upon the complainants' own showing.

18. As complainants had the means of knowledge, and negligently remained ignorant, they are chargeable in law with actual knowledge.

Most of the cases and text-books cited in appellants' brief were read to the courts below. No fault is to be found with their enunciations of the law; but they do not apply to the pleadings or proofs in this case. Prayer C was eliminated from the bill by appellants in the primary court, and the case was heard there without it (R., pp. 199–200).

The primary court was of opinion that complainants' effort to prove a contract to sell part of lot 2 utterly failed; that fraudulent misrepresentations were another matter; that there was not a scrap of paper in the case to show that part of lot 2 was included; that the figures "80" in the paper of May 11, 1900, from respondents to Richold, was an afterthought, and was in different ink, handwriting, etc.; that the contract mentions part of lot 28, and so do the other papers, including the deed, deed of trust, etc.; that the mere fact that Shappirio was taken over the premises and gathered from what was said that the rear ground was included, in view of the papers, would not establish a contract

to sell part of lot 2; the claim that Goldberg led Shappirio to believe that the rear ground was included is denied by the respondents; concede that there was fraud; the contract was an executed one; Grymes *v.* Sanders, 93 U. S., 55, fully lays down the general principles applicable; the evidence of fraud must be clear; fraud or palpable mistake is necessary to rescind an executed contract; Southern Development Co. *v.* Silva, 125 U. S., 249, 250, states the essentials; complainants had *30 days* to close the sale; they made a $4,500 loan on a $6,000 purchase; the parties dealt at arm's-length; Goldberg did not seek out Shappirio, and did not interfere with the latter's investigation of the property; it is idle for Shappirio to say eight months afterwards that he was misled; Shappirio's acts of affirmance bind him; prayer C affirms the sale; it is the primary relief asked; it asks that the rear ground be added to what he got; and there is no offer in the bill or testimony to put Goldberg in *statu quo*. (From memorandum of oral opinion of Mr. Justice Bradley, preliminary to the final decree signed by him, R., pp. 199–200.)

The authorities hereinafter cited may be considered in connection with what I have hereinbefore set forth. I have endeavored to present the complainants' case as it appears to me, and to show that it is unnecessary to further wade through this record into the respondents' proof and the complainants' rebuttal testimony. I think that the case should end here and that the labors of the court and counsel should cease at this point. The Court of Appeals evidently took the same view of the matter, as will appear from its opinion (R., pp. 227–232).

Feeling quite confident that an extended consideration of the respondents' case will not be required in any event, I shall content myself with a brief synopsis of it and then close with a citation of authorities which, I believe, will cover every phase of the matter.

Roginski (Lewis A.) gave evidence (R., pp. 96–104) tend-

ing to show that the respondent, Minnie, had money of her own to buy part of lot 2; that she bought it from her own means; that she was in possession of it; that she caused the new fence to be erected; that he knew and saw Shappirio when the latter worked for Cohen and lived in 1247, etc.

Guy gave testimony tending to contradict certain testimony of Shappirio; to show offers to sell him this property made by Shappirio through his agent, Richold; to show that Goldberg had always been very honorable in his dealings, etc. (R., pp. 105–109).

Lewis (R., pp. 109–116) gave evidence tending to prove the purchase by Minnie from her own means of part of lot 2 and her sole and separate ownership of and estate therein.

Roginski (Isaac) also gave evidence tending to prove the same matters about which Lewis A. Roginski and Solomon Lewis testified, as above stated (R., pp. 117–147). He also testified: Richold wrote and read the authority of May 11, 1900 (R., p. 48). I heard him read it. While reading Goldberg stopped him, and told him that only *part* of the lot (28) runs back to the alley. Goldberg told Richold that he would find everything in his (Goldberg's) deed (the deed to Goldberg), and Richold said all right, and that the deed would show everything. Goldberg told Richold that he would find the width and depth in the deed. Goldberg did not say that the whole lot ran back to the alley; he said only *part* of the lot—*one part* of the lot—runs out to the alley. Not a word was said about the ownership of the ground or shed back of 1247. I never heard either Richold or Shappirio speak about it. I have known Shappirio since the first day he landed in Washington, about fifteen years ago. I have known Goldberg since 1872. Soon after the sale Richold came there and wanted to put up a for-sale sign. He said Shappirio was just speculating, and wanted to make $1,000 on the deal. I knew Shappirio when he clerked for Cohen (and lived in 1247). I never pointed out the rear ground as part of 1247, and never knew Goldberg

to do so. I helped to put up the new fence around part of lot 2. Minnie ordered and paid for it. The shed was and is used for storage purposes. I was present when Shappirio bought some shelving and stuff from Goldberg, *just before Goldberg moved out.* I heard the talk between them. Nothing was said about the ground or stable in the rear of 1247; nothing whatever; they never said a word about it. After Shappirio knew that he did not own the stable back of 1247 I talked with him about the property. He said he *bought it cheap enough.* I never said anything at all about the stables. I worked for Shappirio at one time for about a year in charge of 916 D street and 919 D street and 917 D street. I saw Richold and Shappirio in the Eleventh Street property before the sale. I heard Goldberg tell Richold that there was one part of the lot which would not run out to the alley, and in this way he told him that he did not own it; that he did not own the ground or stable back of 1247. Goldberg said to him that *part* of the lot runs back to the alley; that a part does not, and Richold replied that he would find everything in the deed. Goldberg said *part* of the lot runs to the alley and part does not belong to him. He pointed to the lot. After the sale Shappirio said to me, in the store 1217 Eleventh street, "*I have bought that property cheap enough without that stable. If it costs me $1,000.00 I will take that stable away from him.*" The areaway or passageway is paved with concrete. I visited Shappirio in 1247, when he worked there for Cohen. I used to go there on Sundays and play a little cards with Jake (Shappirio) and Cohen and a few more. We played upstairs in 1247. *There was no yard there at all,* but just a fence. In the summer time we played cards *between the building and the fence* (R., pp. 117–147).

Goldberg (George) gave evidence (R., pp. 201–213, 195–198) fully supporting the allegations of the answer in all respects.

Goldberg (Minnie) also gave evidence (R., pp. 214–224) to the same effect as her husband.

The testimony-in-chief of the respondents has been carefully digested and briefed, and will be found in the record in such concise form that it is considered unnecessary to refer to it at any length in this brief. It will only require a few moments to read and fully appreciate the whole of it, although it answers the whole of complainants' case.

Goldberg's (George) testimony in regard to the erection of the shed back of 1247 (R., pp. 195–198) clearly shows that he did not pay for its construction.

The complainants' proof in rebuttal (R., pp. 157–194) does not affect the case in any material respects whatever. It supplies no defects and removes no fatal evidence already in the case.

The respondents' documentary evidence (R., pp. 147–157) corroborates their answer and parol proofs.

It is submitted that the complainants' case on the facts is destroyed by the respondents' case on the facts. In any event, it seems clear that upon the law and facts combined the decree below was the inevitable result.

There are some rather unusual matters in the record. The proceedings recited in the final decree (R., pp. 199, 200); Richold's loose exclamations while testifying under oath, and Galloway's coarse remark to Ike, repeated by the former while testifying under oath (R., p. 176), may be mentioned.

The evidence of the complainants ran largely to an immaterial goat and a bull pup, which were really not the subject-matter of this suit according to the bill, however interesting and changeable in color they may have been in fact. Much light was also shed upon the history of these animals by the appellants' learned counsel in his critical cross-examination of the respondents and some of their witnesses.

This suit ought never to have been filed. If Shappirio honestly wanted the rear ground, which cost Minnie only $300, it seems more than strange that he made absolutely no effort whatever to acquire it amicably. He never had

any talk with Goldberg about the ownership of the stable. After he (Shappirio) saw the (new) fence there he went to see Goldberg about it, but he happened to be out. "Since then I did not go to him. *I went to consult a lawyer*" (R., p. 87). Even the lawyer did not attempt to get the strip out of court, but promptly filed this suit. The costs of this litigation so far make the purchase-money of the little strip of ground look very puny. *There would have been no difficulty whatever in the complainants' acquisition of the rear ground by mutual agreement out of court, upon an entirely reasonable basis, if they had wanted to acquire it in good faith.* The motive in this suit seems to be to harass the respondents and to put them to the utmost expense of winning the case, or else the complainants delight in litigation. If not, why have they caused an expense which, at the lowest estimate, up to the present time has cost the parties in money alone, apart from time, annoyance, etc., more than five times as much as was paid ($300) for the strip of land by Mrs. Minnie Goldberg to Darby? Shappirio seems to have made good his threat to Ike (R., p. 143) to spend $1,000 to take the stable away from Minnie—except that he has not succeeded.

Attention is respectfully invited to the following authorities, which seem to me to be applicable to the various phases of this case and to checkmate relief to the complainants, no matter what move or argument they may make:

REMEDY AT LAW.

Allegations and proofs of equitable grounds for relief are necessary to give jurisdiction to a court of equity. When the proof fails, the jurisdiction also fails.

Palmer *v.* Fleming, 1 App. D. C., 528.

Consent of parties cannot give equity jurisdiction of a case properly triable at law.

Palmer *v.* Fleming, 1 App. D. C., 528.

Where testimony has been taken as to a matter not in the pleadings, and there is no stipulation in regard to such matter, no decree should be made, but the parties should be left to pursue other remedies.

Offutt *v.* King, 1 MacAr., 312.

The objection that there is a complete remedy at law is jurisdictional, and may be raised by the court of its own motion.

Oelrichs *v.* Spain, 15 Wall., 211.

The court will entertain the objection at the hearing, and dismiss the bill; especially where the complainant's equity is denied, and a conflict of testimony leaves it doubtful if the complainant should have a decree.

Ford *v.* Smith, 1 MacAr., 592.

The rule that equity has no jurisdiction where there is a plain and adequate remedy at law must be closely adhered to in this District, in view of the constitutional provision for trial by jury in suits at common law.

Hess *v.* Horton, 2 App. D. C., 81.

It is not sufficient merely to allege that there is no remedy at law. That fact must appear from the facts stated in the bill.

Pechstein *v.* Smith, 14 App. D. C., 27; 27 W. L. R., 168.

If a bill in equity amount to a mere claim for damages for non-performance of a contract, it must be dismissed. The remedy is at law.

Townsend *v.* Vanderwerker, 20 D. C., 197.

Assumpsit may be maintained by a purchaser of land to recover back money or other consideration paid by him

where the vendor made *false and fraudulent representations* as to his title.

Main *v.* Aukam, 12 App. D. C., 375.

"The *damages* recoverable for * * * *false representations* include all damages, which, in the contemplation of the parties, or according to the natural or usual course of things, may result from the wrongful act."

Dushane *v.* Benedict, 120 U. S., 630.

INCONSISTENT RELIEF.

Complainant cannot attack an instrument as fraudulent and void, and at the same time claim rights under it if the court should be of the opinion that it is valid. He cannot blow hot and cold at the same time.

Lamon *v.* McKee, 18 D. C., 446.

Where a bill charges actual and intentional fraud, and prays for relief on that ground, the complainant cannot, under the prayer for general relief, rely on circumstances which may amount to a case for relief under a distinct head of equity, although those circumstances substantially appear in the bill, but are charged in aid of the actual fraud.

Clark *v.* Krause, 2 M., 559.

Where a bill charges fraud in fact, and complainant fails in his proof, he cannot be aided, under the prayer for general relief, upon a different theory.

Bailor *v.* Daly, 18 D. C., 175.

Party attacking a deed as fraudulent cannot, in the same suit, on failure of his proof to sustain the charge of fraud, shift his ground and claim upon the theory that the deed is operative.

Droop *v.* Ridenour, 11 App. D. C., 224.

Connolly *v.* Belt, 5 Cr. C. C., 405.

Under the prayer for general relief, the complainant can only claim relief of the same general nature as, and consistent with, that prayed in the bill. Relief cannot be claimed under different parts of the bill upon principles diametrically opposite.

Morrison *v.* Shuster, 1 M., 190.

Where the bill charges actual fraud, but the testimony shows that if any fraud existed it was constructive merely, the bill should be amended *before hearing*.

Murray *v.* Hilton, 8 App. D. C., 281.

See also—

Neale *v.* Neale, 9 Wall., 1.

NOTICE.

Notice to the *vendee's title examiner* is notice to the vendee.

Eldridge *v.* Life Ins. Co., 3 MacAr., 301.

Where the *record* discloses facts sufficient to put a purchaser upon inquiry, he cannot be considered an innocent purchaser without notice.

Beckett *v.* Tyler, 3 MacAr., 319.

Fraud in fact will never be presumed, but must be proved. All other things being equal, the motive and design of a representation will be attributed to *honest, rather than corrupt*, motives. A purchaser of a title under a slave marriage, having *notice* of doubts as to the validity of the marriage, cannot claim that he was induced to purchase by fraudulent representations as to the marriage.

Security Co. *v.* Garrett, 3 App. D. C., 69.

One who takes a deed upon the personal credit of the grantor, without examining the title or making inquiries as to the premises, cannot be held a purchaser without *notice*.

Waters *v.* Williamson, 21 D. C., 24.

Notice to an agent or attorney of the purchaser as to facts affecting the title is *notice to the purchaser, although the facts were not communicated to him*, and although the importance of the facts may not have been understood by the agent.

Security Co. *v.* Garrett, 3 App. D. C., 69.

One who buys without examination of title, or causes such examination to be made by reckless or incompetent persons, where a proper examination would show a defective title, cannot claim to be a purchaser in good faith without *notice*, as against the claims of the lawful owner.

Anderson *v.* Reid, 14 App. D. C., 54.

The acts and declarations of an *agent* of the vendor (or *vendee*), in the course of his employment, in relation to the title of land sold or exchanged, bind the vendor (or vendee).

Main *v.* Aukam, 12 App. D. C., 375.

"If, however, it be conceded that *notice* was an essential element * * * the principle would apply, that, *having the means of knowledge, and negligently remaining ignorant, is equivalent, in creating a liability, to actual knowledge.* This is the principle that was laid down in the House of Lords, upon great consideration, in the case of The Mersey Docks *v.* Gibbs, 11 Ho. L. Cas., 687, 701, and which has been quoted with approval by the Supreme Court, in the case to which we have already referred, of Bennett *v.* Railroad Company, *supra*," (102 U. S., 577, 582). Per Alvey, Ch. J., in Wash. Market Co. *v.* Clagett, 29 Wash. L. Rep., 807, 809 (Nov. 5, 1901), — App. D. C., —.

Knowledge of an agent that improvements were being made on property at the time he took a mortgage thereon for his principal, held to charge the mortgagee with *notice* of a mechanic's lien arising out of such improvements, which entitled the lien to priority under the Kentucky statute.

In re Wagner, U. S. D. C., E. D. Ky., 110 Fed Rep., 931.

Fraud will not be presumed as matter of law or fact except under circumstances which do not admit of any other interpretation.

Tucker *v.* Moreland, 10 Pet., 58.

A mere fraudulent intent, not consummated by any act, is no ground of action by the courts.

Clarke *v.* White, 12 Pet., 178.

Fraud is not to be presumed, nor can it be established except upon *clear* proof, either circumstantial or direct. If the form and design of a transaction assailed for fraud may be traced to an honest and legitimate source equally as to a corrupt and fraudulent one, the former should in all cases be preferred.

McDaniel *v.* Parish, 4 App. D. C., 213.

The proofs must be according to the allegations of the parties, and the proofs which go to matters not within the allegations the court cannot judicially act upon as a ground for its decision.

Harrison *v.* Nixon, 9 Pet., 483 (9–201).
Crocket *v.* Lee, 7 Wh., 522 (5–513).
Nash *v.* Towne, 5 Wall., 689 (18–527).

Fraud consists in intention, and that intention *must be averred in pleadings.*

Moss *v.* Riddle, 5 Cranch, 351 (3–123).
Voorhees *v.* Barnesteel, 16 Wall., 16 (21–268).

When bill charges *actual fraud* it cannot be sustained by proof of some of the facts, even though they may show constructive fraud.

Eyre *v.* Potter, 15 How., 42 (14–592).

Fraud is never presumed, but must be made out clearly.

Farrar *v.* Churchill, 135 U. S., 609 (34–246).

Schreyer *v.* Scott, 134 U. S., 405 (33–955).

Where the answer as well as answers to interrogatories are directly responsive to the allegations of the bill and deny the fraud the burden is on the plaintiff to establish the charge by evidence *aliunde.*

Eyre *v.* Potter, 15 How., 421 (14–592).

Simonton *v.* Vinter, 5 Pet., 141 (8–75).

Law presumes possession of vendee to have been *rightfully acquired,* and when it appears that a *sufficient consideration* was paid, vendee is entitled to verdict and judgment *unless it be shown affirmatively that he purchased in bad faith.*

Jones *v.* Simpson, 116 U. S., 609 (29–742).

Fraud is question of fact.

Warner *v.* Norton, 20 How., 448 (15–950).

McLaughlin *v.* Bk. of Potomac, 7 How., 220 (12–675).

That nominal value of property more than twice amount paid not itself indicative of *fraud.* See—

Davis *v.* Schwartz, 155 U. S., 631–647.

(39 L. Ed., 289.)

RESCISSION, EXECUTED CONTRACT, PROOF, ETC.

Where a party desires to rescind a contract upon the ground of mistake or *fraud* he *must,* upon the discovery of the facts, *at once* announce his purpose and *adhere* to it. *If he be silent and continue to treat the property as his own he will be held to have waived the objection and will be conclusively bound by the contract, as if the mistake or fraud had not occurred.*

McLean *v.* Clapp, 141 U. S., 429 (35–804).

Warner *v.* Godfrey, — U. S., —. 30 W. L. R., 502.

(S. C. U. S., June 2, 1902.)

If a party means to rescind a contract because of the failure of the other party to perform it he should give a clear notice of his intention to do so, unless the contract itself dispenses with such notice, or unless notice becomes unnecessary by reason of the conduct of the parties.

Hennessy *v.* Bacon, 137 U. S., 78 (34–605).

1. Misrepresentation must be relied on.
2. No rescission where party has means of knowledge, but does not resort to them.
3. Where parties deal "at arm's-length," and there is no fiduciary relation between them, *vendor may remain silent and be safe.*

Note: Book 40, p. 543 and cases cited (Co-op. Ed. Reps. S. C. U. S.).

Cancellation of an executed contract is an exertion of the most extraordinary power of equity, never exercised unless fraud or falsity of representation is clearly proved and complainant was deceived and injured by them.

Atlantic Delaine Co. *v.* James, 94 U. S., 207 (24–112).

When a contract for the sale of land is fully executed by a conveyance with a covenant of warranty and the payment of the purchase-money, the remedy for a defect of title is by an action on the covenant. A party declining to pursue that remedy and applying to the court of equity to rescind the entire contract must show very clearly that such a rescission is necessary to the ends of justice. If, therefore, on or before the final hearing the vendor makes and tenders a perfect title, no rescissions will be decreed, unless the vendee has suffered great loss or injury by the delay, and not then if such loss or injury can be fairly compensated by damages.

Kimball *v.* West, 15 Wall., 377 (21–95).

When in a court of equity it is proposed to *set aside, annul,* or correct *a written instrument* for *fraud* or mistake in the execution, the testimony on which this is done must be clear, unequivocal, and convincing, and not a mere preponderance of evidence which leaves the matter in doubt.

U. S. v. Maxwell Land Grant Co., 121 U. S., 325 (30–949).

U. S. *v.* San Jacinto Tin Co., 125 U. S., 273 (31–747).

U. S. *v.* Hancock, 133 U. S., 193 (33–601).

To justify the reformation of a written contract the evidence must be sufficiently cogent to satisfy thoroughly the mind of the court.

Simmons Creek Coal Co. *v.* Doran, 142 U. S., 43 (35–931).

A party seeking the rescission of a contract on the ground of *misrepresentations* must establish the same by *clear and irrefragable* evidence.

Farnsworth *v.* Duffner, 142 U. S., 43 (35–931).

Where relief can be granted only by setting aside a grant, a patent or other evidence of title issued by the Government, the evidence must be *clear, strong and satisfactory.*

U. S. *v.* Des Moines N. & R. Co., 142 U. S., 510 (35–1099).

Proofs which create only a suspicion do not bring the assurance of certain wrong.

United States *v.* Hancock, *supra.*

A bill to *cancel a deed* will be dismissed where the issue is entirely one of fact and the integrity of the transaction is not satisfactorily impeached.

Cissel *v.* Dutch, 125 U. S., 171 (31–642) (from D. C.).

Where all the *written* testimony tended to corroborate, rather than impeach, an agreement of settlement, and it was by *oral* evidence asserted by one and denied by another that any doubt arose, and where parties acted with deliberation *and after consultation, or opportunity to consult with* counsel, the court upheld the *written* agreement. The testimony should establish misrepresentations clearly and satisfactorily.

Chandler *v.* Pomeroy, 143 U. S., 318 (36–169).

Parol proof should never be made the foundation of a decree to reform a written contract so as to vary it, except it be of the clearest and most satisfactory character.

Snell *v.* Atlanta F. & M. Insurance Co., 98 U. S., 85 (25–52).

Howland *v.* Blake, 97 U. S., 624 (24–1027).

The evidence to impeach a deed or mortgage regular in appearance and bearing the genuine signature and duly certified acknowledgment of the grantor or mortgagor should be clear and convincing.

Northwestern Mutual Life Insurance Co. *v.* Nelson, 103 U. S., 544 (26–436).

It is too late to set up claim of fraud in procuring of agreement *after the party has carried the agreement into execution.*

Day *v.* Union India Rubber Co., 20 How., 216 (15–883).

An executed contract will not be declared void by a court of equity except upon the clearest evidence that it was without authority of law.

Noyes *v.* Coasting Co., MacAr. & Mackey, 1.

The facts and circumstances of the case, when taken together, must be strong enough to generate a *clear, rational conviction* of the existence of the *fraud charged.*

McDaniel *v.* Parish, 4 App. D. C., 213.

The reformation of a contract on the ground of mistake should not be decreed unless there is *clear proof* of *mutual* mistake, or mistake of one party induced by the fraud, deception, or wrong of the other party.

Clack *v.* Hadley, Tenn., 64 S. W. Rep., 403.

In order to reform a written contract a *mutual* mistake as to its form as actually signed is necessary.

Gough *v.* Williamson, N. J., 50 Atl. Rep., 323.

A contract cannot be reformed on the ground of *mistake* unless it is *clearly shown* that the *mistake was mutual.*

Fulton *v.* Colwell, U. S. C. C. (N. J.), 110 Fed. Rep., 54 (1901).

A contract of sale which has been executed with covenants for title will not be set aside as having been procured through false representations as to the non-existence of tax liens on the premises, except upon *clear* proof that it was founded upon such representations.

Harrington *v.* Ross, 15 W. L. R., 220.

After a contract for the sale of land has been executed by the delivery and acceptance of a deed, a bill will *not* lie, *in the absence of fraud,* to rescind the contract and have restitution of the purchase-money, on the ground of a defect in the title.

Smoot *v.* Coffin, 4 Mackey, 407.

Where a plaintiff exchanged his farm for a stock of goods, his conduct in selling from the stock held to preclude any rescission on the ground of fraud.

Moore *v.* Howe, Iowa, 87 N. W. Rep., 750.

Where there is no *mutual* mistake in the description in a deed of the property to be conveyed, and the parties intend to describe the land conveyed, a reformation thereof is not warranted on the ground of mistake.

Sherwood *v.* Johnson, Ind., 62 N. E. Rep., 645.

Where a purchaser of goods, after a fair opportunity of inspection, unconditionally accepts them, or deals with them as his own, he cannot repudiate such acceptance and refuse to pay.

Harper *v.* Baird, Del., 50 Atl. Rep., 326.

FALSE REPRESENTATIONS, PROOF, ETC.

False representation must be of an *existing and ascertainable fact*, not matter of opinion or advice, and *must be false and known to be false* by the party making it at the time.

Cooper *v.* Schlesinger, 111 U. S., 148 (28–382).

Misrepresentation, to vitiate contract of sale, must relate to material fact, constituting an *inducement* to the contract of which complaining party *had no means of knowledge, and upon which he relied*, and by which he was actually misled to his injury.

Slaughter *v.* Gerson, 13 Wall., 379 (20–627).

The neglect to make reasonable examination will preclude a purchaser from rescinding a contract of purchase on the ground of false and fraudulent representations. *He is also precluded when it appears that he did make such examination and relied on the evidence furnished by such examination, and not upon the representations.*

Farnsworth *v.* Duffner, 142 U. S., 43 (35–931).

In a suit in equity to set aside a contract and conveyances by which lands were exchanged, for false and fraudulent representations, where the evidence shows that in

making the exchange *no reliance was placed upon the representations, but that the party acted upon his own judgment and upon information obtained from third persons*, no ground is shown for maintaining the suit.

Shields *v.* Hanbury ("Hoyt *v.* Hanbury"), 128 U. S., 584 (32–565).

Where *means of knowledge are at hand and are equally available to both parties, and subject of purchase is open for inspection, if purchaser does not avail himself of these means*, he will not be heard to say, to impeach contract, *that he was deceived by vendor's misrepresentations.*

Slaughter *v.* Gerson, 13 Wall., 379 (20–627).

There must be a representation, express or implied, false within the knowledge of the party making it, *reasonably relied on by the other party*, and constituting a material inducement to his contract or act; if fact misrepresented not material inducement it will not vitiate, *or if not relied on, or reasonably relied on*, it will not vitiate.

"Such, for example, will be the case, if the party to whom the representation is made *resorts to the proper means of verification, so as to show that he in fact relied on his own inquiries; or if the means of investigation and verification are at hand, and his attention is drawn to them*, or if the representation regards a mere matter of opinion or inference with respect to which both parties have equal means of forming a judgment."

Adams Eq., *177, and cases.

False assertion of value, misstatement by buyer of motives in purchasing or in limiting amount of his offer, or vague and indefinite terms of commendation, will not vitiate. Representations must not only be false, but *known to be false.*

Adams Eq., *178, and cases.

Where both parties stand upon an equality of footing the fraud must consist of false representation of a material fact, and party to whom it is *made not be able by the exercise of reasonable caution and vigilance to detect its falsity.*

Finlayson *v.* Finlayson, 17 Or., 347; 3 L. R. A., 801.

Where both parties have *equal means of information, so that by the exercise of ordinary prudence and diligence either may rely upon his own judgment, misrepresentations, though false, will not be considered fraudulent.*

Adams Eq., *177.

The law raises no presumption of knowledge of falsity from the single fact *per se* that the representation was false.

Southern Development Co. *v.* Silva, 125 U. S., 247 (31–678).

Proceeds of sale can be followed only in cases of actual fraud clearly established. Actual fraud or fraud in fact can never be presumed, but must always be proved by the party who alleges it. If motive or design can be traced equally to *honest* and dishonest source, the *former* ought to be preferred.

"And though a representation made by a party sought to be charged was at the time untrue, yet, if the party was ignorant of it, and, so far as appears from the evidence, believed it was true, he is not responsible for the loss sustained by the other party in trusting to such representation."

Security Inv. Co. *v.* Garrett, 3 App. D. C., 69, 76.
McDaniel *v.* Parish, 4 App. D. C., 213.

As to cancellation of deed or contract in equity for *fraud*, concealment, or misrepresentation, see note to—

Nibbett *v.* McFarland, 23 L. Ed., 471.

If parties make contracts where there is no fraud, upon contingencies uncertain to both, with equal means of information, the courts cannot undertake to set them aside.

Gavinzel *v.* Crump, 22 Wall., 308 (22–783).

A contract signed because a party was in straitened circumstances, greatly embarrassed and in pressing want of money, where the other party to it is not responsible for his necessities, is a voluntary act, and he is bound by its terms. Where such a party signed a contract *after he had ample time for inquiry, examination, and reflection*, neither a court of equity nor a court of law can release him from its obligations.

French *v.* Shoemaker, 14 Wall., 314 (20–852).

A person alleging the fraudulent procurement of a contract *must allege* (and prove) that the false representations of the defendant gave rise to the contract, *and that the contract would not have been made but for such representations.*

Security Co. *v.* Garrett, 3 App. D. C., 69.

If one, after discovering the *fraud* or other invalidating circumstance, *delays, or continues to deal with the property as before*, he *affirms* the sale or other transaction; and, though he may afterwards discover other invalidating facts, he cannot disaffirm.

Clements *v.* Smith, 9 Gill., 160.
Howard *v.* Carpenter, 11 Md., 259.

See also—
Shields *v.* Barron, 17 How., 130.
Grymes *v.* Sanders, 93 U. S. (3 Otto), 55.

A vendee of real estate held not entitled to a rescission on the ground of misrepresentations where the facts relative to which the representations were made *were obvious.*

Trammell *v.* Ashworth, Va., 39 S. E. Rep., 593.

Where a vendee of a house and lot occupied the same *for a considerable time without claiming misrepresentations on the*

part of the vendor, held that she was not entitled to a rescission because of misrepresentations.

Trammell *v.* Ashworth, Va., 39 S. E. Rep., 593.

Where the vendor gave the vendee every opportunity he possessed to inform himself of the *location, condition and title* to the lands under negotiation, and requested him to call on the *proper persons and officers* to ascertain the facts regarding the lands, the vendee cannot have relief on the ground of misrepresentations as to the title.

Sanders *v.* Lyon, 2 MacAr., 452.

In the absence of any allegation of fraud or mistake in a *written* contract for the sale of the interests of two of a large number of heirs in a tract of land, the purchaser cannot avoid payment on the ground that the vendors falsely represented that they had title as heirs to certain lands, to which they in fact had no title.

Begley *v.* Eversole, Ky., 64 S. W. Rep., 513.

"The burden of proof is on the complainant, and unless he brings evidence sufficient to overcome the natural presumption of fair dealing and honesty, a court of equity will not be justified in setting aside a contract on the ground of fraudulent representations. In order to establish a charge of this character the complainant must show by clear and decisive proof: First, that the defendant *has made* a representation in regard to a material fact. Secondly, that such representation is false. Thirdly, that such representation was *actually believed* by the complainant *on reasonable grounds*, to be true. Fourthly, that it was made with intent that it should be acted on. Fifthly, that it *was* acted on by complainant to his damage; and, sixthly, that in so *acting on it* the complainant was ignorant of its falsity and *reasonably believed* it to be true."

Per Lamar, J., in Southern Development Co. *v.* Silva, 125 U. S., 249, 250.

One who contracts for the purchase of real estate in reliance on the representations of the vendor, but *after* he has

had the means of verifying such statements, cannot avoid the contract on the ground that they were false.

Brown *v.* Smith, U. S. C. C., 109 Fed. Rep., 26.

"The rule of *caveat emptor* is one of the most valuable of our common-law inheritances, and should not be twisted out of its old-time effectiveness by reason of its working apparent injustice in hard cases. Any modification of its ancient sternness would be a calamity, tending not only to increase litigation but to make weaklings out of the people and encourage them to rely more on the strong arm of the court than upon their own common sense and judgment. Entertaining such views we, of course, are inclined to commend most emphatically the decision of the court in the recent case of Brown *v.* Smith, 109 Fed. Rep., 26, where it was held that one who contracts for the purchase of real estate in reliance on the representations and statements of the vendor as to its character and value, but after he has visited and examined it for himself, and has had the means and opportunity of verifying such statements, cannot avoid the contract on the ground that they were false or exaggerated. The court expresses itself in this language: 'Reviewing and considering the testimony, it is manifest that the defendant entered into this contract *assuming* many things to be true without proper examination, and without using the means of verification at hand. There was no sort of fiduciary relation between him and the plaintiff. They were mere acquaintances, and in their dealings were both on guard, or should have been. He is evidently a gentleman of culture, of intelligence, and experienced in affairs. He is not a ward of the court, nor entitled to its special protection.'"

53 Central Law Journal, 282 (Oct., 1901).

STATUTE OF FRAUDS.

The mere refusal of a party to perform a parol contract for the sale of lands is not such a fraud as will give a court of equity jurisdiction to interfere to enforce it.

Dunphy *v.* Ryan, 116 U. S., 491 (29–703).

Where an agreement concerns land and is in parol it is void by the statute of frauds. If it so appears on the face

of the bill, such defense may be taken advantage of on demurrer.

Randall *v.* Howard, 2 Bl., 585 (17–269).

A parol agreement, creating by parol a trust or interest in lands, cannot be sustained under the statute of frauds.

Howland *v.* Blake, 97 U. S., 624 (24–1027).

The statute which requires a contract for land to be in writing is equally binding on courts of equity and courts of law. Courts of equity in some cases have relaxed the rules, but only for the purpose of preventing the use of the statute for fraud.

Purcell *v.* Coleman ("Purcell *v.* Minor"), 4 Wall., 513 (18–435).

A written contract within the statute of frauds cannot be varied by any subsequent agreement of the parties, unless such new agreement is also in writing.

Swan *v.* Seamens, 9 Wall., 259 (19–554).

Onus probandi lies on party asserting existence of trust.

Prevost *v.* Gratz, 6 Wheat., 481 (5–311).

Unless the transactions to which the charges of fraud or a breach of trust refer are such as in their *essential* nature constitute a *fraud* or breach of trust, a court of chancery cannot grant relief.

Van Weel *v.* Winston, 115 U. S., 228 (29–384).

The court will not be astute to charge a trust on one who has acted honestly.

Wilson *v.* Wall., 6 Wall., 83 (18–727).

WRITTEN CONTRACTS, CONSTRUCTION, PAROL EVIDENCE.

Written Contracts, Construction of.

Courts will not assume to make a contract for the parties which they did not choose to make for themselves.

Morgan County *v.* Allen, 103 U. S., 515 (26–583).

Courts cannot incorporate into a sealed instrument any covenant for the expression of which language is entirely wanting in the instrument, and which cannot be legally implied from any other covenant therein, although the contract, as expressed, may seem much in favor of one party, and the omission of a covenant was clearly occasioned by mistake.

Delaware & H. Canal Co. *v.* Pennsylvania Coal Co., 8 Wall., 276 (19–349).

Gavinsel *v.* Crump, 22 Wall., 308 (22–783).

Robbins *v.* Clarks ("Robbins *v.* Rollins"), 127 U. S., 622 (32–292).

Where the meaning of the contract is clear the error of the parties cannot control its effect.

Philadelphia, W. & B. R. R. Co. *v.* Trimble, 10 Wall., 367 (19–948).

Written Instruments, Parol Testimony.

Both at law and in equity parol testimony is inadmissible to vary a written instrument.

Forsythe *v.* Kimball, 91 U. S., 291 (23–352).

Richardson *v.* Hardwick, 106 U. S., 252 (27–145).

Baltzer *v.* Raleigh R. R. Co., 115 U. S., 634 (29–505).

Parol evidence to show how all the parties understood the transaction from its commencement to its final consummation is inadmissible to explain and qualify what is in writing.

Bailey *v.* Hannibal & St. J. R. R. Co., 17 Wall., 96 (21–611).

So is evidence of prior declarations or conduct.

Baker *v.* Nachtrieb, 19 How., 126 (15–528).

When parties have put their engagements into writing, in such terms as import a legal obligation without any uncertainty, it is *conclusively* presumed that the *whole engagement* was reduced to *writing*, and all oral testimony of a previous conversation between the parties is inadmissible.

De Witt *v.* Berry, 134 U. S., 309 (33–896).

Seitz *v.* Brewers' Refrigerating Machine Co., 141 U. S., 510 (35–837).

A party who gives in evidence a written agreement cannot give testimony of contemporaneous oral agreements to vary the written agreement where he does not seek to prove any additional agreement or any consideration for the same.

Culver *v.* Wilkinson, 145 U. S., 205 (36–676).

Johnson *v.* St. Louis, etc., R. R. Co., 141 U. S., 602 (35–875).

Gilbert *v.* Moline Plow Co., 119 U. S., 491 (30–476).

Where written contract contains no guaranty, parol evidence of one is inadmissible.

Van Winkle *v.* Crowell, 146 U. S., 42 (36–880).

Although a party to a contract had objections to it, yet, having executed it, his mouth is closed against any denial that it superseded all previous arrangements.

Parish *v.* United States, 8 Wall., 489 (19–472).

Oral agreements between the parties to a written contract, made before or at the time of the execution of the contract, are merged in the contract, and are inadmissible to vary its terms or to effect its construction.

Emerson *v.* Slater, 22 How., 28 (16–360).

Oebucks *v.* Ford, 23 How., 49 (16–534).

Union Mutual Insurance Co. *v.* Mowry, 96 U. S., 544 (27–674).

A verbal agreement between the parties to a deed made at the time of the delivery, or previous thereto, that one of them should be released from the covenants contained in the deed, cannot defeat an action for the alleged breach of those covenants.

Wadsworth *v.* Warren, 12 Wall., 307 (20–402).

A parol agreement of insurers made on receiving a promissory note, in direct contradiction to the express terms of the policy, and the note itself cannot affect them, but is itself void.

Thompson *v.* Knickerbocker Life Insurance Co., 104 U. S., 252 (26–765).

Where a contract of sale is clearly expressed in writing the printed bill-head of the invoice of the goods cannot control, modify or alter it.

Sturm *v.* Boker, 150 U. S., 312 (37–1093).

Parol evidence is not admissible to supply an omission of an important provision from a deed, *whether intentional* or through a mistake of law *or from carelessness*, in the absence of fraud on the part of the grantor.

McCartney *v.* Fletcher, 11 App. D. C., 1.

Parol evidence is not admissible to show that it was intended that grantees should take as tenants in common, and not as joint tenants.

Seitz *v.* Seitz, 11 App. D. C., 358.

See also—

Potomac *v.* Upper, 109 U. S., 672.
Spofford *v.* Brown, 1 MacAr., 223.
Linville *v.* Holden, 2 MacAr., 329.
Burr *v.* Meyers, 2 MacAr., 524.
Langdon *v.* Evans, 3 Mackey, 1.

"In each case the burden rests upon the moving party of overcoming the *strong presumption* arising from the terms of a written instrument. If the proofs are doubtful and unsatisfactory, if there is a failure to overcome this presumption by testimony entirely plain and convincing *beyond reasonable controversy*, the writing will be held to express correctly the intention of the parties. A judgment of the court, a deliberate deed or writing, are of too much solemnity to be brushed away by loose and inconclusive evidence."

Per Hunt, J., in Howland *v.* Blake, 97 U. S., 624–626.

See also—

Snell *v.* Ins. Co., 98 U. S., 85.
U. S. *v.* Maxwell, 121 U. S., 325.
U. S. *v.* San Jacinto, 125 U. S., 273.
U. S. *v.* Hancock, 133 U. S., 193.
Simmons *v.* Doran, 142 U. S., 417.
Osborne *v.* Mortgage Co., 8 App. D. C., 481.

RESTORING CONSIDERATION.

The remedy which the court affords on a void transaction is the replacement of the parties in *statu quo* (Adams Eq., *191).

The beneficiary of a life-insurance certificate who settles for less than its face value cannot *rescind* the settlement for *fraud* and maintain an action on the claim, without first repaying the money received.

Moore *v.* Mass. Ben. Ass'c'n, 43 N. E. Rep., 298 (Mass.).

That consideration received must be returned or offered to be returned before deed will be set aside, see—

Cunningham *v.* Macon & B. R. R. Co., 156 U. S., 400, 425 (39–471, 478).

Citing—

Collins *v.* Riggs, 81 U. S., 14 Wall., 492 (20–723).
Jones Mortgages, sec. 1669.
Pom. Equity, secs. 1220 *et seq.*

Insolvency of purchaser, who knew that debts exceeded assets when first or any subsequent bills of goods were purchased, would not of itself justify the setting aside of the sale after the goods had come fully and fairly into his possession. To avoid such a sale after buyer has taken possession there must have been some trick or artifice or false pretense or suppression of truth which enabled him to get possession, *and* it must appear that he *then* intended not to pay for the goods, *and full restoration of whatever of value was received must have been made by the seller.*

Thompson *v.* Peck, 115 Ind., 512.
1 L. R. A., 201.

Mere failure to pay purchase-money according to terms of contract will not entitle vendor to have contract rescinded. Where vendee has paid part of purchase-money, and has given notes for balance, before vendor can rescind he *must return*, or *offer to return*, the money paid *with legal interest*, less reasonable rental value of premises, if vendee has been in possession, and also all unpaid notes.

Frank *v.* Thomas, 20 Or., 265; 12 L. R. A., 239.

So also if contract be rescinded for fraud at suit of vendee.

Tarkington *v.* Purvis, 128 Ind., 182; 9 L. R. A., 607.

"The jurisdiction (of equity) for rescission and cancellation arises where a transaction is vitiated by illegality or fraud, or by reason of its having been carried on in ignorance or mistake of facts material to its operation. And it is exercised for a double purpose, first, for cancelling *executory* contracts * * * and, secondly, for setting aside *executed* conveyances * * * where it is necessary to replace the parties in *statu quo*. The * * * relief * * * may be by * * * reconveyance of the property which has been unduly obtained."

Adams Equity, *174, and numerous cases cited in note 3.

The court will not rescind unless it can put the parties in *statu quo*. *Id.*, note 3, *infra*, and cases cited.

In cases of usury courts of equity will give no relief to the borrower if the contract be executory, except on condition that he pay the money loaned, with legal interest.

Tiffany *v.* Boatman's Saving Institution, 18 Wall., 375 (21–878).

Where a bank received a mortgage as security in exchange for certain other securities from a debtor, it *cannot vacate* the *agreement* for such exchange upon any *allegation of imposition or fraud, without surrendering the mortgage.*

Farmers' Bank of Virginia *v.* Graves, 12 How., 51 (13–889).

He who seeks equity must do equity, and cannot set aside the proceedings for collection of a debt without tendering the amount due.

McQuiddy *v.* Ware, 20 Wall., 14 (22–311).

COMPLAINANTS' EQUITIES MUST PREPONDERATE.

If equity does not preponderate in favor of the complainants they must fail.

Garnett *v.* Jenkins, 8 Pet., 75 (8–871).

A mere preponderance of evidence which is at the same time vague or ambiguous is not sufficient to warrant a finding of fraud.

Lalone *v.* U. S., 164 U. S., 255.

NO ESTOPPEL.

"Where the condition of the title is known to both parties, or both have the same means of ascertaining the truth, there can be no estoppel."

Brant *v.* Virginia Coal Co., 93 U. S., 326, 327 (23–927, 929).

Cited with approval in—

Mutual *v.* Phinney, 178 U. S., 343.

It is respectfully submitted that:

1. The decree should be affirmed upon the complainants' own showing.

2. The decree should be affirmed at all events upon the entire record.

THOMAS M. FIELDS,
Solicitor for Appellees.

WASHINGTON, *December*, 1903.



SHAPPIRIO *v.* GOLDBERG.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 87. Argued December 9, 1903.—Decided January 18, 1904.

To ascertain its jurisdiction this court looks not to a single feature of the case but to the entire controversy.

Where the prayer for relief is either for conveyance of land worth less than $5000 or for a rescission of a contract of sale and repayment of the purchase money of over $5000, the necessary amount is involved to give this court jurisdiction of an appeal from the Court of Appeals of the District of Columbia.

Where the issues are mainly those of fact, in the absence of clear showing of error, the findings of the two lower courts will be accepted as correct.

Where a party desires to rescind on the ground of misrepresentation or fraud, he must upon the discovery of the fraud announce his purpose and adhere to it. If he continues to treat the property as his own the right of rescission is gone and he will be held bound by the contract.

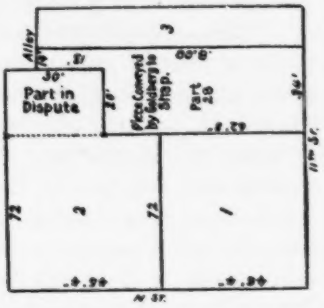
THIS was an action begun in the Supreme Court of the District of Columbia by Mary Shappirio and Jacob Shappirio, her husband, against Minnie D. Goldberg and George Goldberg, her husband, having for its object equitable relief because of alleged fraud of the respondents in the sale of certain property in Washington, District of Columbia, to the complainant, Mary Shappirio.

It appears that the sale was made through one Richold, a broker in real estate. George Goldberg was the owner of the property, and by memorandum made on May 11, 1900, authorized Richold to sell the property known as lots Nos. 1245 and 1247, being part of lot 28, square 977, fronting 34 feet on 11th street S. E., by eighty feet deep to an alley. Richold sold the property to Jacob Shappirio, for whom he was seeking an investment, for the price of $6000. The terms were cash, $100 having been paid down at the making of the sale. This

property, having two buildings upon it, and being part of lot 28, is described as follows:

"Beginning for the same at the southeast corner of said lot and running thence north on Eleventh street thirty-four (34) feet; thence west eighty (80) feet eight (8) inches to an alley; thence south on said alley fourteen (14) feet; thence east eighteen (18) feet; thence south twenty (20) feet, and thence east sixty-two (62) feet eight (8) inches to the place of beginning."

In the rear of the premises there was a strip 20 by 30 feet, having upon it a shed or stable, which, before the sale, was in the possession of Goldberg under an arrangement for its use, and was used by him in connection with the premises. This piece was not fenced off at the time of sale and might well be taken to be a part of the premises by any person examining the same without accurate knowledge of the extent of the property actually owned by Goldberg. The annexed plat shows the part of lot 28 covered by the description in the deed and the part of lot 2 in dispute:



Although the purchase was made by Jacob Shappirio, the deed was made to Mary Shappirio, June 5, 1900. On September 28, 1900, a conveyance by the owner of the title to lot 2 was made of the part of that lot in the rear of the premises to Minnie D. Goldberg, wife of George Goldberg, for the consideration of $300. Mary Shappirio and Jacob Shappirio on

June 5, 1900, executed a deed of trust upon the property conveyed to her in the sum of $4500. In the trust deed the property was accurately described.

After the property had been conveyed to Mary Shappirio it was rented to Goldberg, the vendor, who continued to occupy the same for eleven months. Upon asking a reduction of the rent, which was refused, Goldberg left the premises. On May 18, 1901, the present bill was filed, in which it was charged that Goldberg, in order to induce the sale in question, falsely represented that the property in the rear of lot 28 belonged to him, and would be included in the property sold, and notwithstanding the appearance of the property and the representations of Goldberg, the part conveyed did not include the part of lot 2 in the rear of lot 28; that George Goldberg afterwards purchased the property, part of lot 2, and caused the same to be conveyed to Minnie D. Goldberg, his wife, as a part of a scheme to defraud the plaintiff. That the wife was a party to the fraud, and had no interest in the property except to hold it for her husband.

The bill prays that this parcel of ground, part of lot 2, be decreed to be held by Minnie D. Goldberg for the use of the plaintiff, Mary Shappirio, and be conveyed to her. If this relief cannot be granted, the prayer is that the sale be rescinded, and Goldberg be required to pay back the amount of the purchase money, with costs and charges, and upon default of payment the property be sold.

A general denial of the allegations of fraud and deceit is made in the answer, together with the averment that the plaintiffs relied upon their own investigation, and if they were deceived as to the extent of the property, it was the result of the want of due care upon their part.

In the Supreme Court the bill of the complainants was dismissed, which decree was affirmed in the Court of Appeals.

Mr. Leo Simmons for appellants:

The evidence shows that the appellees have made false

statements: First, about the building of the stable; second, about the occupancy of the yard and stable; third, about the fact of Goldberg having said to Shappirio that the small piece of land and stable did not belong to him; and fourth, about the corroborative evidence in relation to the animals not being about the premises, at the time of the negotiation of the sale; and fifth, about Mrs. Goldberg having paid for the small piece of land with her own funds, each and every one of which was absolutely false, some admitted so and others proven so beyond doubt.

The decree below should be reversed and the case remanded with directions to enter a decree for the enforcement of the contract as originally made. If not the contract should be rescinded as prayed in the alternative.

The following authorities, among others, support appellant's contention. For what constitutes fraud and misrepresentation, see *Crosby* v. *Buchanan*, 23 Wall. 454; *Stewart* v. *Cattle Ranch Co.*, 128 U. S. 383; *Tyler* v. *Savage*, 143 U. S. 77; *Smith* v. *Richards*, 13 Pet. 26; *Henderson* v. *Henshaw*, 54 Fed. Rep. 320; Kerr on Fraud and Mistake, 81, 101; Pomeroy's Eq. § 877, 880; *Good* v. *Riely*, 153 Massachusetts, 585.

On question as to what time action should be begun, see *Dickerson* v. *Patterson*, 160 U. S. 586; *Pence* v. *Langdon*, 99 U. S. 578; *Kilborn* v. *Sunderland*, 130 U. S. 505; Kerr on Fraud and Mistake, 305; *Nesbit* v. *McFarland*, 92 U. S. 77; *Tyler* v. *Savage*, 143 U. S. 77; *Gallinger* v. *Newell*, 9 Indiana, 572; *Morston* v. *Simpson*, 54 California, 190.

Mr. Thomas M. Fields for appellees, submitted:

The appeal should be dismissed. The actual amount is only $6000 for the value of the property less the deed of trust of $4500. There is a want of necessary parties. On the merits appellants have no case. 14 A. & E. Ency. (2d ed.) 148.

When proofs of equitable grounds for relief fail, the jurisdiction of a court of equity also fails. Consent of parties cannot give equity jurisdiction of a case properly triable at law.

Palmer v. *Fleming*, 1 App. D. C. 528; *Offutt* v. *King*, 1 MacAr. 312; *Oelrichs* v. *Spain*, 15 Wall. 211; *Ford* v. *Smith*, 1 MacAr. 592; *Hess* v. *Horton*, 2 App. D. C. 81; *Pechstein* v. *Smith*, 14 App. D. C. 27; *S. C.*, 27 Wash. L. R. 168; *Townsend* v. *Vanderwerker*, 20 D. C. 197. Damages can be recovered for false representations. *Main* v. *Aukam*, 12 App. D. C. 375; *Dushane* v. *Benedict*, 120 U. S. 630.

Complainants cannot attack an instrument as fraudulent and void, and at the same time claim rights under it if the court should be of the opinion that it is valid. *Lamon* v. *McKee*, 18 D.C. 446; *Clark* v. *Krause*, 2 Mackey, 559. Where a bill charges fraud in fact, and complainant fails in his proof, he cannot be aided, under the prayer for general relief, upon a different theory. *Bailor* v. *Daly*, 18 D. C. 175; *Droop* v. *Ridenour*, 11 App. D. C. 224; *Connolly* v. *Belt*, 5 Cr. C. C. 405; *Morrison* v. *Shuster*, 1 Mackey, 190; *Murray* v. *Hilton*, 8 App. D. C. 281; *Neale* v. *Neale*, 9 Wall. 1. Where the record discloses facts sufficient to put a purchaser on notice, he is not an innocent purchaser without notice. *Elridge* v. *Life Ins. Co.*, 3 MacAr. 301; *Beckett* v. *Tyler*, 3 MacAr. 319; *Security Co.* v. *Garrett*, 3 App. D. C. 69; *Waters* v. *Williamson*, 21 D. C. 24; *Anderson* v. *Reid*, 14 App. D. C. 54; *Main* v. *Aukam*, 12 App. D. C. 375; *Washington Market Co.* v. *Claggett*, 29 Wash. L. R. 807; *In re Wagner*, 110 Fed. Rep. 931.

Fraud will not be presumed as matter of law or fact except under circumstances which do not admit of any other interpretation. *Tucker* v. *Moreland*, 10 Pet. 58; *Clarke* v. *White*, 12 Pet. 178; *McDaniel* v. *Parish*, 4 App. D. C. 213; *Harrison* v. *Nixon*, 9 Pet. 483; *Crocket* v. *Lee*, 7 Wheat. 522; *Nash* v. *Towne*, 5 Wall. 689. Fraud consists in intention, and that intention must be averred in pleadings. *Moss* v. *Riddle*, 5 Cranch, 351; *Voorhees* v. *Barnesteel*, 16 Wall. 16; *Eyre* v. *Potter*, 15 How. 42; *Farrar* v. *Churchill*, 135 U. S. 609; *Schreyer* v. *Scott*, 134 U. S. 405; *Simonton* v. *Winter*, 5 Pet. 141; *Jones* v. *Simpson*, 116 U. S. 609. Fraud is a question of fact. *Warner* v. *Norton*, 20 How. 448; *McLaughlin* v. *Bk. of Potomac*, 7 How. 220; *Davis* v. *Schwartz*, 155 U. S. 631, 647.

Where a party desires to rescind a contract upon the ground of mistake or fraud he must, upon the discovery of the facts, at once announce his purpose and adhere to it. If he be silent and continue to treat the property as his own he will be held to have waived the objection and will be conclusively bound by the contract, as if the mistake or fraud had not occurred. *McLean* v. *Clapp*, 141 U. S. 429; *Hennessy* v. *Bacon*, 137 U. S. 78; *Atlantic Delaine Co.* v. *James*, 94 U. S. 207; *Kimball* v. *West*, 15 Wall. 377.

When in a court of equity it is proposed to set aside, annul, or correct a written instrument for fraud or mistake in the execution, the testimony on which this is done must be clear, unequivocal, and convincing, and not a mere preponderance of evidence which leaves the matter in doubt. *United States* v. *Maxwell Land Grant Co.*, 121 U. S. 325; *United States* v. *San Jacinto Tin Co.*, 125 U. S. 273; *United States* v. *Hancock*, 133 U. S. 193; *Simmons Creek Coal Co.* v. *Doran*, 142 U. S. 43; *Farnsworth* v. *Duffner*, 142 U. S. 43; *United States* v. *Des Moines, N. & R. Co.*, 142 U. S. 510; *Cissel* v. *Dutch*, 125 U. S. 171; *Chandler* v. *Pomeroy*, 143 U. S. 318; *Snell* v. *Ins. Co.*, 98 U. S. 85; *Howland* v. *Blake*, 97 U. S. 624; *Ins. Co.* v. *Nelson*, 103 U. S. 544; *Day* v. *Union India Rubber Co.*, 20 How. 216; *Noyes* v. *Coasting Co.*, 1 MacAr. & Mackey, 1; *McDaniel* v. *Parish*, 4 App. D. C. 213; *Clack* v. *Hadley*, 64 S. W. Rep. (Tenn.) 403; *Gough* v. *Williamson*, 50 Atl. Rep. (N. J.) 323; *Fulton* v. *Colwell*, 110 Fed. Rep. 54; *Harrington* v. *Ross*, 15 Wash. L. R. 220; *Smoot* v. *Coffin*, 4 Mackey, 407; *Moore* v. *Howe*, 87 N. W. Rep. (Iowa) 750; *Sherwood* v. *Johnson*, 62 N. E. Rep. (Ind.) 645; *Harper* v. *Baird*, 50 Atl. Rep. (Del.) 326.

False representations must be of an existing and ascertainable fact and not matter of opinion or advice and must be false and known to be false by the party making them at the time and on which the other party relied. *Cooper* v. *Schlesinger* 111 U. S. 148; *Slaughter* v. *Gerson*, 13 Wall. 379; *Farnsworth* v. *Duffner*, 142 U. S. 43; *Shields* v. *Hanbury*, 128 U. S. 584; Adams's Eq. * 177, * 178, and cases cited; *Finlayson* v. *Finlay-*

son, 17 Oregon, 347; *Southern Development Co.* v. *Silva*, 125 U. S. 247; *Gavinzel* v. *Crump*, 22 Wall. 308; *French* v. *Shoemaker*, 14 Wall. 314; *Security Co.* v. *Garrett*, 3 App. D. C. 69; *Clements* v. *Smith*, 9 Gill. 160; *Howard* v. *Carpenter*, 11 Maryland, 259; *Shields* v. *Barron*, 17 How. 130; *Grymes* v. *Sanders*, 93 U. S. 55; *Trammell* v. *Ashworth*, 39 S. E. Rep. (Va.) 593; *Sanders* v. *Lyon*, 2 MacAr. 452; *Begley* v. *Eversole*, 64 S. W. Rep. (Ky.) 513; *Brown* v. *Smith*, 109 Fed. Rep. 26; 53 Cent. L. J. 282, Oct. 1901.

The mere refusal of a party to perform a parol contract for the sale of lands is not such a fraud as will give a court of equity jurisdiction to interfere to enforce it. *Dunphy* v. *Ryan*, 116 U. S. 491; *Randall* v. *Howard*, 2 Black. 585; *Howland* v. *Blake*, 97 U. S. 624; *Purcell* v. *Coleman*, 4 Wall. 513; *Swan* v. *Seamens*, 9 Wall. 259; *Prevost* v. *Gratz*, 6 Wheat. 481; *Van Weel* v. *Winston*, 115 U. S. 228; *Wilson* v. *Wall*, 6 Wall. 83.

Courts will not assume to make a contract for the parties which they did not choose to make for themselves. *Morgan County* v. *Allen*, 103 U. S. 515. Nor will they incorporate into a sealed instrument any covenant not there and which cannot be legally implied from any other covenant therein, although the contract, as expressed, may seem much in favor of one party, and the omission of a covenant was clearly occasioned by mistake. *D. & H. Canal Co.* v. *Pennsylvania Coal Co.*, 8 Wall. 276; *Gavinzel* v. *Crump*, 22 Wall. 308; *Robbins* v. *Clarks*, 127 U. S. 622; *Philadelphia, W. & B. R. R. Co.* v. *Trimble*, 10 Wall. 367.

Both at law and in equity parol testimony is inadmissible vary a written instrument. *Forsythe* v. *Kimball*, 91 U. S. 291; *Richardson* v. *Hardwick*, 106 U. S. 252; *Baltzer* v. *Raleigh R. R. Co.*, 115 U. S. 634; *Bailey* v. *Hannibal & St. J. R. R. Co.*, 17 Wall. 96; *Baker* v. *Nachtrieb*, 19 How. 126; *De Witt* v. *Berry*, 134 U. S. 309; *Seitz* v. *Brewers' Refrigerating Machine Co.*, 141 U. S. 510; *Culver* v. *Wilkinson*, 145 U. S. 205; *Johnson* v. *St. Louis, etc., R. R. Co.*, 141 U. S. 602; *Gilbert* v. *Moline Plow Co.*, 119 U. S. 491; *Van Winkle* v. *Crowell*, 146 U. S. 42; *Parish* v.

United States, 8 Wall. 489; *Emerson* v. *Slater*, 22 How. 28; *Oebucks* v. *Ford*, 23 How. 49; *Union Mutual Insurance Co.* v. *Mowry*, 96 U. S. 544; *Wadsworth* v. *Warren*, 12 Wall. 307; *Thompson* v. *Knickerbocker Life Ins. Co.*, 104 U. S. 252; *Sturm* v. *Boker*, 150 U. S. 312; *McCartney* v. *Fletcher*, 11 App. D. C. 1; *Seitz* v. *Seitz*, 11 App. D. C. 358; *Potomac* v. *Upper*, 109 U. S. 672; *Spofford* v. *Brown*, 1 MacAr. 223; *Linville* v. *Holden*, 2 MacAr. 329; *Burr* v. *Meyers*, 2 MacAr. 524; *Langdon* v. *Evans*, 3 Mackey, 1; *Snell* v. *Ins. Co.*, 98 U. S. 85; *Simmons* v. *Doran*, 142 U. S. 417; *Osborne* v. *Mortgage Co.*, 8 App. D. C. 481, and cases cited *supra*.

The remedy which the court affords on a void transaction is the replacement of the parties in *statu quo*. Adams's Eq. *191; *Moore* v. *Mass. Ben. Assn.*, 43 N. E. Rep. (Mass.) 298.

Consideration received must be returned or offered to be returned before deed will be set aside. *Cunningham* v. *Macon & B. R. R. Co.*, 156 U. S. 400, 425, citing *Collins* v. *Riggs*, 14 Wall. 492; Jones on Mortgages, § 1669; Pom. Equity, § 1220 *et seq.*; and see *Thompson* v. *Peck*, 115 Indiana, 512; *Frank* v. *Thomas*, 20 Oregon, 265; *Tarkington* v. *Purvis*, 128 Indiana, 182; Adams's Equity, *174, and cases cited; *Tiffany* v. *Boatman's Saving Institution*, 18 Wall. 375; *Farmers' Bank* v. *Graves*, 12 How. 51.

He who seeks equity must do equity, and cannot set aside the proceedings for collection of a debt without tendering the amount due. *McQuiddy* v. *Ware*, 20 Wall. 14.

Complainants' equities must preponderate and if equity does not preponderate in favor of the complainants they must fail. *Garnett* v. *Jenkins*, 8 Pet. 75; *Lalone* v. *United States*, 164 U. S 255; *Brant* v. *Virginia*, 93 U. S. 326; *Mutual* v. *Phinney*, 178 U. S. 343.

Mr. Justice Day, after making the foregoing statement, delivered the opinion of the court.

The first question raised for our consideration involves the

jurisdiction of this court on appeal, it being claimed that the matter in dispute, exclusive of costs, does not exceed the sum of $5000. By the act of February 9, 1893, chapter 74, 27 Stat. 434, jurisdiction to review the final judgments of the Court of Appeals of the District of Columbia is given where the matter in dispute exceeds the sum of $5000, exclusive of costs. In determining this question we may look to the allegations and prayer of the bill to ascertain the relief sought and the real extent of the controversy between the parties. The bill contains a prayer for the conveyance of the small strip of ground, which was purchased for $300, and if that were the only subject-matter of the suit, the amount required to give this court the right of review would not be in controversy. But if this relief is denied, the complainants seek, in the alternative, to have the contract rescinded and the payment of the sum of $6000, the purchase money, with costs and interest, decreed against the respondents. Upon the pleadings we are of opinion that this sum is also in dispute between the parties, and therefore this court has jurisdiction. To ascertain the right of jurisdiction in such a case we look not to a single feature of the case, but to the entire controversy between the parties. *Stinson* v. *Dousman*, 20 How. 461.

In this case the issues are mainly those of fact, and in the absence of clear showing of error the findings of the two lower courts will be accepted as correct. *Stuart* v. *Hayden*, 169 U. S. 1; *Dravo* v. *Fabel*, 132 U. S. 487. An examination of the record in the light of these findings does not enable us to reach the conclusion that error has been committed to the prejudice of the appellants.

As to what was said by Goldberg at the time of the purchase of the property in conversation with Richold, the broker, and at the time the premises were visited by Shappirio with a view to purchase, there is much conflict of testimony. The use of the premises as a connected whole might well lead the purchaser to believe, in the absence of accurate knowledge, that it was all under the ownership of one person, and would be

included in the sale of the property to him; and, as said by the Court of Appeals, we believe that Shappirio may have been ignorant of the true condition of the title. But it was also found by that court that a correct description of the property was given in the deed and recorded chain of title. Richold, who made the sale, was entrusted by Shappirio with the examination of the deed and title, and thirty days were given to complete the purchase. For this purpose Richold was the agent of Shappirio, and it not appearing in the proof that he was misled by the representations of Goldberg, or that by any scheme or plan he was kept from a full examination of the title and the description of the property contained in the deed furnished, he must be held chargeable with knowledge which the opportunity before him afforded to investigate the extent and nature of the property conveyed and which he undertook to examine for the purchaser. It is true that Richold testifies that he was misled by the silence of Goldberg and by the situation and use of the property, and stoutly denies that he had the knowledge which a reading of the accurate description of the deed would give. But he undertook to investigate the matter and report upon the title. A casual reading of the description in the deed or examination of the recorded plat would have shown that the premises were not of a uniform depth of eighty feet, and had the L-shape extension in the rear of the lot, which excludes any part of lot 2 from the premises conveyed. For the purpose of this examination Richold was the agent of Shappirio, and his knowledge and means of information must be imputed to the purchaser. There are cases where misrepresentations are made which deceive the purchaser, in which it is no defence to say that had the plaintiff declined to believe the representations and investigated for himself he would not have been deceived. *Mead* v. *Bunn*, 32 N. Y. 275. But such cases are to be distinguished from the one under consideration. When the means of knowledge are open and at hand or furnished to the purchaser or his agent and no effort is made to prevent the party from using them, and especially where the

purchaser undertakes examination for himself, he will not be heard to say that he has been deceived to his injury by the misrepresentations of the vendor. *Slaughter's Admr.* v. *Gerson*, 13 Wall. 379; *Southern Development Co.* v. *Silva*, 125 U. S. 247; *Farrar* v. *Churchill*, 135 U. S. 609; *Farnsworth* v. *Duffner*, 142 U. S. 43.

If this action is viewed as one to rescind a contract, in the light of the testimony and the findings of the courts below, the appellants stand upon no better ground.

It is well settled by repeated decisions of this court that where a party desires to rescind upon the ground of misrepresentation or fraud, he must upon the discovery of the fraud announce his purpose and adhere to it. If he continues to treat the property as his own the right of rescission is gone, and the party will be held bound by the contract. *Grymes* v. *Sanders*, 93 U. S. 55; *McLean* v. *Clapp*, 141 U. S. 429. In other words, when a party discovers that he has been deceived in a transaction of this character he may resort to an action at law to recover damages, or he may have the transaction set aside in which he has been wronged by the rescission of the contract. If he choose the latter remedy, he must act promptly, "Announce his purpose and adhere to it," and not by acts of ownership continue to assert right and title over the property as though it belonged to him. In the present case, some months before the beginning of this action, probably in October, 1900, Shappirio learned that the conveyance did not include the premises, part of lot 2, in the rear of lot 28. It may be that the mere lapse of time in this case would not of itself have defeated the right to rescind, as a purchaser has a reasonable time in which to make election of such remedy after discovery of the fraud, *Neblett* v. *Macfarland*, 92 U. S. 101, 105, but he cannot after such discovery treat the property as his own and exercise acts of ownership over it which show an election to regard the same as still his and at the same time preserve his right to rescission. In the present case, after discovering that the part of lot 2 had not been conveyed by the

deed, Shappirio collected rents for some months upon the property, corresponded with Goldberg as to future terms of rental, declined to reduce the rent, made some repairs upon the property and performed other acts of ownership. This conduct is wholly inconsistent with an election to undo the transaction and stand upon his right to rescind the contract.

We find no error in the judgment of the Court of Appeals affirming the decree of the Supreme Court, and it is

Affirmed.